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Counsel for Defendant
ERNST & YOUNG LLP

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

2008 MAY 28 PM 1:24
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM;
LOS ANGELES CITY EMPLOYEES'
RETIREMENT SYSTEM;
SOUTHWEST CARPENTERS PENSION
TRUST;
SHEET METAL WORKERS PENSION PLAN
OF NORTHERN CALIFORNIA;
AMERICAN GENERAL LIFE AND
ACCIDENT INSURANCE COMPANY;
AMERICAN GENERAL LIFE INSURANCE
COMPANY;
AIG ANNUITY INSURANCE COMPANY;
AIG LIFE INSURANCE COMPANY;
AIG STRATEGIC BOND FUND;
AMERICAN INTERNATIONAL LIFE
ASSURANCE COMPANY OF NEW YORK;
AMERICAN INTERNATIONAL GROUP
RETIREMENT PLAN;
AIG US HIGH YIELD BOND FUND;
AIG US HIGH YIELD BOND FUND;
BEATRICE HIGH YIELD CAYMAN UNIT
TRUST;
SEASONS SERIES TRUST STRATEGIC
BOND FUND;
VARIABLE ANNUITY LIFE INSURANCE
COMPANY II STRATEGIC BOND FUND;
VARIABLE ANNUITY LIFE INSURANCE
COMPANY II HIGH YIELD BOND FUND;
SUNAMERICA INCOME FUNDS HIGH
YIELD BOND FUND;
SUNAMERICA SERIES TRUST HIGH YIELD
BOND PORTFOLIO;
SUNMAMERICA INCOME FUNDS

CASE NO.

CV 08-03491

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NOTICE OF REMOVAL

COPY

1 STRATEGIC BOND FUND;
 2 THE UNITED STATES LIFE INSURANCE
 3 COMPANY;
 4 AUTOMOTIVE INDUSTRIES PENSION
 5 TRUST FUND;
 6 ECLIPSE FUNDS INC.;
 7 McMORGAN FUNDS;
 8 NEW YORK LIFE INSURANCE AND
 9 ANNUITY CORPORATION;
 10 NEW YORK LIFE INSURANCE COMPANY;
 11 NEW YORK LIFE INSURANCE COMPANY
 12 HIGH YIELD SEPARATE ACCOUNT;
 13 FINCH TACTICAL PLUS CLASS B;
 14 ALTMA FUND SICA V PLC in respect of THE
 15 GRAFTON SUB FUND;
 16 CONTEXT ADVANTAGE MASTER FUND,
 17 LP;
 18 INSTITUTIONAL BENCHMARKS SERIES
 19 (MASTER FEEDER) LIMITED in respect of
 20 ALCOR SERIES;
 21 WORLDWIDE TRANSACTIONS LIMITED;
 22 LEHMAN BROTHERS FIRST TRUST
 23 INCOME OPPORTUNITY FUND INC.;
 24 LEHMAN BROTHERS ALPHA FUNDS PLC
 25 for LEHMAN BROTHERS U.S. HIGH YIELD
 26 FUND;
 27 LEHMAN BROTHERS HIGH YIELD BOND
 28 FUND LLC;
 NEUBERGER BERMAN ADVISERS
 MANAGEMENT TRUST for LEHMAN
 BROTHERS HIGH INCOME BOND FUND;
 LEHMAN BROTHERS INCOME FUNDS for
 LEHMAN BROTHERS HIGH INCOME BOND
 FUND;
 LEHMAN BROTHERS INCOME FUNDS for
 LEHMAN BROTHERS STRATEGIC INCOME
 FUND;
 NEUBERGER BERMAN INCOME
 OPPORTUNITY FUND, INC.;
 AUTOMOBILE CLUB INSURANCE
 ASSOCIATION;
 GM CANADA FOREIGN TRUST;
 GMAM INVESTMENT FUNDS TRUST;
 MOTORS INSURANCE CORPORATION;
 PLUMBERS & PIPEFITTERS NATIONAL
 PENSION FUND;
 ATRIUM IV;
 ATRIUM V;
 CASTLE GARDEN FUNDING;
 MADISON PARK FUNDING II, LTD.;
 MADISON PARK FUNDING III, LTD.;
 CSAM FUNDING I, LTD.;
 CREDIT SUISSE SYNDICATED LOAN FUND;
 CREDIT SUISSE HIGH YIELD FUND;
 SEI INSTITUTIONAL MANAGED TRUST –
 HIGH YIELD BOND FUND;
 SEI INSTITUTIONAL INVESTMENTS TRUST

– HIGH YIELD BOND FUND;
 SEI GLOBAL MASTER FUND – HIGH YIELD
 BOND FUND;
 STICHTING PENSIOENFONDS METAAL EN
 TECHNIEK;
 GENERAL MOTORS WELFARE BENEFITS
 TRUST;
 THE NATURE CONSERVANCY;
 STICHTING BEDRIJFSTAKPENSIOENFONDS
 VOOR DE METALEKTRO;
 ALASKA RETIREMENT MANAGEMENT
 BOARD;
 BOWSPRIT OFFSHORE LTD.;
 ING (L) SELECTED STRATEGIES SICA V -
 HIGH YIELD SUB FUND; HIGH YIELD
 COMMON TRUST; HIGH YIELD
 COLLECTIVE TRUST;
 DELAWARE GROUP EQUITY FUNDS I -
 DELAWARE BALANCED FUND;
 DELAWARE GROUP INCOME FUNDS -
 DELAWARE DELCHESTER FUND;
 DELAWARE GROUP ADVISER FUNDS -
 DELAWARE DIVERSIFIED INCOME FUND;
 DELAWARE POOLED TRUST - THE HIGH
 YIELD BOND PORTFOLIO;
 DELAWARE GROUP INCOME FUNDS -
 DELAWARE HIGH-OPPORTUNITIES FUND;
 OPTIMUM FUND TRUST - OPTIMUM FIXED
 INCOME FUND;
 DELAWARE VIP TRUST - DELAWARE VIP
 DIVERSIFIED INCOME SERIES; DELAWARE
 VIP TRUST - DELAWARE VIP HIGH YIELD
 SERIES; DELAWARE INVESTMENTS
 DIVIDEND AND INCOME FUND, INC.;
 DELAWARE GROUP EQUITY FUNDS V -
 DELAWARE DIVIDEND INCOME FUND; and
 DELAWARE INVESTMENTS GLOBAL
 DIVIDEND AND INCOME FUND, INC.,

Plaintiffs,

v.

WACHOVIA CAPITAL MARKETS, LLC d/b/a
 WACHOVIA SECURITIES;
 ERNST & YOUNG LLP; and
 BDO SEIDMAN, LLP,

Defendants.

1 **PLEASE TAKE NOTICE** that, on this date, defendant Ernst & Young
2 LLP ("E&Y"), by its undersigned counsel, files this Notice of Removal pursuant to
3 28 U.S.C. § 1452, removing this matter (the "California Action") from the Superior
4 Court of the State of California, County of Los Angeles to the United States District
5 Court for the Central District of California. This Court has original jurisdiction over
6 this case pursuant to 28 U.S.C. § 1334.

7 In support of this Notice of Removal, E&Y states as follows:

8 **The Complaint**

9 1. On April 28, 2008, 75 Plaintiffs, former holders of 9% Senior Subordinated
10 Notes issued by the now bankrupt Le-Nature's, Inc. (the "Notes"), commenced a civil
11 action in Superior Court of the State of California, County of Los Angeles. Plaintiffs
12 seek over \$70 million in alleged compensatory damages, as well as punitive damages
13 and pre-judgment and post-judgment interest. The Complaint asserts eleven causes of
14 action against one or more Defendants, including multiple claims for (a) fraud, (b)
15 aiding and abetting fraud, (c) negligent misrepresentation, (d) fraudulent inducement,
16 and (e) fraudulent failure to correct. (A copy of the Complaint is attached as Exhibit
17 A to the Declaration of Rebecca J. Wahlquist, dated 5/28/08 ("Wahlquist Decl."),
18 filed herewith.)

19 2. Le-Nature's, Inc., a Delaware corporation headquartered in Latrobe,
20 Pennsylvania, as well as its wholly-owned subsidiaries, Le-Nature's Holdings, Inc.
21 and Tea Systems International, LLC, are currently in Chapter 11 bankruptcy
22 proceedings, pending in the United States Bankruptcy Court for the Western District
23 of Pennsylvania. *See In re Le-Nature's, Inc.*, Case Nos. 06-25454-MBM, 06-25590-
24 MBM, 06-25591-MBM) (W.D. Pa. 2006) ("Bankruptcy Proceedings").

25 **Grounds for Removal**

26 3. Title 28 U.S.C. § 1452(a) permits a party to remove any claim or cause of
27 action "to the district court for the district where such civil action is pending, if such
28

1 district court has jurisdiction of such claim or cause of action under section 1334 of
2 this title.” 28 U.S.C. § 1452(a).

3 4. Section 1334 provides the district court with jurisdiction to hear all civil
4 proceedings that are “related to” cases under the Bankruptcy Code. 28 U.S.C.
5 § 1334(b). “Related to” jurisdiction is construed broadly to encompass “nearly every
6 matter directly or indirectly related to the bankruptcy.” *In re Mann*, 907 F.2d 923,
7 926 n.4 (9th Cir. 1990).

8 5. A civil proceeding is “related to” bankruptcy if the “*the outcome of the*
9 *proceeding could conceivably have any effect on the estate being administered in*
10 *bankruptcy.*” *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988) (*quoting Pacor, Inc. v.*
11 *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis in original)). Thus, a proceeding
12 may be “related to” a bankruptcy even if it does not involve claims against the debtor
13 or against the debtor’s property. *Id.*

14 6. Further, an “action is related to bankruptcy if the outcome could alter the
15 debtor’s rights, liabilities, options, or freedom of action (either positively or
16 negatively) and which in any way impacts upon the handling and administration of the
17 bankruptcy estate.” *In re Am. Hardwoods, Inc.*, 885 F.2d 621, 623 (9th Cir. 1989)
18 (*quoting In re Fietz*, 852 F.2d at 457).

19 7. Plaintiffs’ claims are “related to” the Le-Nature’s ongoing Bankruptcy
20 Proceedings in the following ways:

21 a. The California Action necessarily affects the Debtor’s liabilities
22 and obligations, as well as the administration of the Le-Nature’s estate in bankruptcy.
23 More than a year before filing this lawsuit, at least fourteen of the 75 Plaintiffs filed
24 claims in the Bankruptcy Proceedings to recover the same losses related to the Notes
25 that they are claiming in this litigation. Those Plaintiffs are:

- 26 • Delaware VIP Diversified Income Series (Compl. ¶ 87, Ex. A to Wahlquist
27 Decl.);
- 28 • Delaware VIP High Yield Series (*id.* ¶ 88);
- Delaware Delchester Fund (*id.* ¶ 82);

- Delaware High-Yield Opportunities Fund (*id.* ¶ 85);
- Delaware Group Adviser Funds on behalf of the Delaware Diversified Income Fund (*id.* ¶ 83);
- Delaware Investments Dividend & Income Fund, Inc. (*id.* ¶ 89);
- Delaware Investments Global Dividend & Income Fund, Inc. (*id.* ¶ 91);
- Delaware Group Equity Funds I on behalf of the Delaware Balanced Fund (*id.* ¶ 81);
- Delaware Pooled Trust High Yield Bond Portfolio (*id.* ¶ 84);
- New York Life Insurance Company (*id.* ¶ 42);
- New York Life Insurance Company High Yield Separate Account (*id.* ¶ 43);
- New York Life Insurance and Annuity Corporation (*id.* ¶ 41);
- Automotive Industries Pension Trust Fund (*id.* ¶ 38); and
- Sheet Metal Workers Pension Plan of Northern California (*id.* ¶ 20).

(A copy of each of these Plaintiffs' Proof of Claims is attached as Exhibits B–I to Wahlquist Declaration.)¹

b. In the Bankruptcy Proceedings, each of the fourteen Plaintiffs asserts “claims against the Debtor” made “under both federal and state law, relating to the Notes,” including “*any and all claims for breach of contract, fraud, fraudulent inducement, fraudulent misrepresentation and negligent misrepresentation with respect to the Debtor’s statements and conduct, including*, without limitation, the Debtor’s covenants, representations, warranties and other obligations and duties

¹ In addition to the fourteen entities listed above, seven AIG-affiliated Plaintiffs—AIG Annuity Insurance Company (Compl. ¶ 23, Ex. A to Wahlquist Decl.), AIG Life Insurance Company (*id.* ¶ 24), AIG Strategic Bond Fund Ireland (*id.* ¶ 25), American International Life Assurance Company of New York (*id.* ¶ 26), American International Group Retirement Plan (*id.* ¶ 27), AIG US High Yield Bond Fund (Japan) (*id.* ¶ 28), and AIG US High Yield Bond Fund (Ireland) (*id.* ¶ 29)—apparently filed claims on the Notes through AIG Global Investment Corporation “as investment adviser or subadviser for certain funds and accounts.” (AIG Global Investment Corp. Proof of Claim Form at Rider to Proof of Claim, dated March 20, 2007, attached as Ex. J to Wahlquist Decl.) The Proof of Claim asserts that the AIG-affiliated entities “purchased certain publicly-traded bonds and notes due 2013 (the ‘Notes’) issued by Debtors”—*i.e.*, the Notes at issue in the California Action—and specifies that the Proof of Claim encompasses “all loss or damage arising from [the AIG-affiliated entities’] investment in and sale of the Notes, subject to any part of this claim that may have been transferred to another entity.” (*Id.* ¶¶ 1, 11)

1 contained in the Indenture, *the Notes and any documents relating thereto.*” (Exs. B–
2 I to Wahlquist Decl. (emphasis added))

3 c. If Plaintiffs recover in the California Action, in whole or in part, for
4 the losses they allegedly suffered from their ownership of the Notes, that recovery
5 would necessarily reduce or eliminate Le-Nature’s’ liabilities on the claims filed by
6 the fourteen Plaintiffs in the Bankruptcy Proceedings. *See Pan Pacific Retail Props.,*
7 *Inc. v. Gulf Ins. Co.*, 471 F.3d 961, 973–74 (9th Cir. 2006) (a party does not have the
8 “right to recover twice for the same loss”). Because any recovery by Plaintiffs in this
9 litigation would directly alter the Debtor’s liabilities in the Bankruptcy Proceedings,
10 the outcome of this litigation has much more than a “conceivable effect” on the Le-
11 Nature’s bankruptcy. The California Action’s effect on Le-Nature’s’ liabilities on the
12 Notes is therefore more than sufficient to establish federal jurisdiction under 28
13 U.S.C. § 1334. *See In re Kaonohi Ohana, Ltd.*, 873 F.2d 1302, 1307 (9th Cir. 1989)
14 (upholding “related to” jurisdiction where plaintiff’s success in third-party action
15 would reduce debtor’s exposure in separate breach of contract action); *see also In re*
16 *Celotex Corp.*, 124 F.3d 619, 626 (4th Cir. 1997) (finding “related to” jurisdiction
17 where creditor’s claim against non-debtor would reduce creditor’s claim in
18 bankruptcy, altering debtor’s liabilities).

19 d. By reducing or eliminating recovery in the Bankruptcy Proceedings
20 by the fourteen Plaintiffs who filed claims on the Notes, any recovery by Plaintiffs in
21 this litigation would increase the recovery of other creditors in the Bankruptcy
22 Proceedings. Simply put, if Plaintiffs recover anything in this litigation, then Le-
23 Nature’s’ remaining creditors will be entitled to a larger share of Le-Nature’s’
24 remaining assets. This Court therefore has “related to” jurisdiction not only because
25 recovery in the California Action would alter the Debtor’s liabilities to the fourteen
26 Plaintiffs, but also because recovery in this action would impact the bankruptcy
27 estate’s handling and administration of the claims of other creditors. *See In re*
28 *Canion*, 196 F.3d 579, 586 (5th Cir. 1999) (“related to” jurisdiction exists over

1 plaintiff-creditor's state court claims against non-debtors because recovery by
2 plaintiff-creditor would reduce the amount due on its claims in bankruptcy, "to the
3 benefit of all other unsecured creditors, each of whom would then share in the
4 disbursement that would otherwise have been paid to [plaintiff-creditor]").

5 e. Moreover, certain of the Defendants in this lawsuit are creditors of
6 Le-Nature's in the Bankruptcy Proceedings. Defendant Wachovia Capital Markets,
7 LLC ("Wachovia") has asserted claims of more than \$282 million on its own behalf
8 and on behalf of other lenders to Le-Nature's for whom Wachovia is administrative
9 agent, in connection with a September 1, 2006 Secured Credit Agreement. (*See*
10 Wachovia Bankruptcy Claim, dated 3/16/07, Ex. K to Wahlquist Decl.) In addition,
11 BDO Seidman LLP ("BDO") is listed as a creditor in the bankruptcy, for more than
12 \$100,000 of unpaid fees. (*See* Le-Nature's Inc. Bankruptcy Schedules, dated 1/8/07,
13 Ex. L to Wahlquist Decl.) If Plaintiffs prevail on their claims in the Complaint against
14 Wachovia and BDO, then Wachovia's claim and BDO's recovery as a creditor could
15 be equitably subordinated to the claims of other creditors. *See Stoumbos v. Kilimnik*,
16 988 F.2d 949, 958 (9th Cir. 1993) (citations omitted); 11 U.S.C. § 510(c). Such
17 equitable subordination could re-prioritize distributions by the Debtor—reducing the
18 likelihood that Wachovia and BDO would recover anything on their claims in
19 bankruptcy, while increasing the likelihood of recovery by creditors whose claims are
20 currently subordinated to those of Wachovia and BDO. Thus, in this respect as well,
21 the California Action could "alter the debtor's rights [and] liabilities" and impact "the
22 handling and administration of the bankruptcy estate." *In re Am. Hardwoods, Inc.*,
23 885 F.2d at 623.

24 f. Accordingly, this action is "related to" the Bankruptcy Proceedings,
25 and removal is proper under 28 U.S.C. § 1452.

26 **Timeliness**

27 8. E&Y has timely filed this notice of removal within thirty (30) days of
28 service of the Complaint in accordance with 28 U.S.C. § 1446(b) and Fed. R. Bankr.

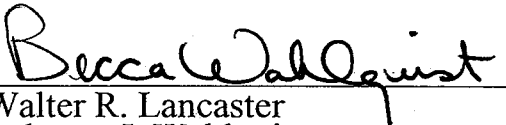
1 P. 9027(a)(3). E&Y waived service of process and received the Complaint in this
2 action on April 28, 2008. No other pleadings or process have been filed in the state
3 court.

4 **Non-Core**

5 As required by Fed. R. Bankr. P. 9027(a)(1), E&Y states that the claims
6 asserted against it are non-core within the meaning of 28 U.S.C. § 157(b). E&Y does
7 not consent to the entry of final orders or judgment by the bankruptcy judge.

8 WHEREFORE, E&Y respectfully requests that this Court accept this
9 notice of removal and grant it such other and further relief as the Court deems just and
10 proper.
11

12 DATED: May 28, 2008

13 By: 
14

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7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10
11 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
SYSTEM;

12 LOS ANGELES CITY EMPLOYEES' RETIREMENT
SYSTEM;

13 SOUTHWEST CARPENTERS PENSION TRUST;
14 SHEET METAL WORKERS PENSION PLAN OF
NORTHERN CALIFORNIA;

15 AMERICAN GENERAL LIFE AND ACCIDENT
INSURANCE COMPANY;

16 AMERICAN GENERAL LIFE INSURANCE
COMPANY;

17 AIG ANNUITY INSURANCE COMPANY;

18 AIG LIFE INSURANCE COMPANY;

19 AIG STRATEGIC BOND FUND;

20 AMERICAN INTERNATIONAL LIFE ASSURANCE
COMPANY OF NEW YORK;

21 AMERICAN INTERNATIONAL GROUP
RETIREMENT PLAN;

22 AIG US HIGH YIELD BOND FUND;

23 AIG US HIGH YIELD BOND FUND;

24 BEATRICE HIGH YIELD CAYMAN UNIT TRUST;

25 SEASONS SERIES TRUST STRATEGIC BOND FUND;

26 VARIABLE ANNUITY LIFE INSURANCE COMPANY
II STRATEGIC BOND FUND;

27 VARIABLE ANNUITY LIFE INSURANCE COMPANY
II HIGH YIELD BOND FUND;

28 SUNAMERICA INCOME FUNDS HIGH YIELD BOND
FUND;

SUNAMERICA SERIES TRUST HIGH YIELD BOND
PORTFOLIO;

SUNAMERICA INCOME FUNDS STRATEGIC BOND
FUND;

THE UNITED STATES LIFE INSURANCE COMPANY;
AUTOMOTIVE INDUSTRIES PENSION TRUST
FUND;

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

APR 28 2008

John A. Clarke, Executive Officer/Clerk

By: D.M. Swain, Deputy
D.M. SWAIN

Case No. BC389785

**COMPLAINT FOR FRAUD,
FRAUDULENT INDUCEMENT,
AIDING AND ABETTING
FRAUD, & NEGLIGENT
MISREPRESENTATION**

JURY TRIAL DEMANDED

Trial Date: None Set

COPY

Exhibit A

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1 ECLIPSE FUNDS INC.;
 2 McMORGAN FUNDS;
 3 NEW YORK LIFE INSURANCE AND ANNUITY
 CORPORATION;
 4 NEW YORK LIFE INSURANCE COMPANY;
 5 NEW YORK LIFE INSURANCE COMPANY HIGH
 YIELD SEPARATE ACCOUNT;
 6 FINCH TACTICAL PLUS CLASS B;
 7 ALTMA FUND SICAV PLC in respect of THE
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 8 CONTEXT ADVANTAGE MASTER FUND, LP;
 9 INSTITUTIONAL BENCHMARKS SERIES (MASTER
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 10 WORLDWIDE TRANSACTIONS LIMITED;
 11 LEHMAN BROTHERS FIRST TRUST INCOME
 OPPORTUNITY FUND INC.;
 12 LEHMAN BROTHERS ALPHA FUNDS PLC for
 LEHMAN BROTHERS U.S. HIGH YIELD FUND;
 13 LEHMAN BROTHERS HIGH YIELD BOND FUND
 LLC;
 14 NEUBERGER BERMAN ADVISERS MANAGEMENT
 TRUST for LEHMAN BROTHERS HIGH INCOME
 BOND FUND;
 15 LEHMAN BROTHERS INCOME FUNDS for LEHMAN
 BROTHERS HIGH INCOME BOND FUND;
 16 LEHMAN BROTHERS INCOME FUNDS for LEHMAN
 BROTHERS STRATEGIC INCOME FUND;
 17 NEUBERGER BERMAN INCOME OPPORTUNITY
 FUND INC.;
 18 AUTOMOBILE CLUB INSURANCE ASSOCIATION;
 19 GM CANADA FOREIGN TRUST;
 20 GMAM INVESTMENT FUNDS TRUST; MOTORS
 INSURANCE CORPORATION;
 21 PLUMBERS & PIPEFITTERS NATIONAL PENSION
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 SEI GLOBAL MASTER FUND – HIGH YIELD BOND
 FUND;
 STICHTING PENSIOENFONDS METAAL EN
 TECHNIEK;
 GENERAL MOTORS WELFARE BENEFITS TRUST;
 THE NATURE CONSERVANCY;
 STICHTING BEDRIJFSTAKPENSIOENFONDS VOOR

Exhibit A

Page 11

COMPLAINT

1 DE METALEKTRO;
 2 ALASKA RETIREMENT MANAGEMENT BOARD;
 3 BOWSPRIT OFFSHORE LTD.;
 4 ING (L) SELECTED STRATEGIES SICAV - HIGH
 5 YIELD SUB FUND; HIGH YIELD COMMON TRUST;
 6 HIGH YIELD COLLECTIVE TRUST;
 7 DELAWARE GROUP EQUITY FUNDS I -
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 9 DELAWARE GROUP INCOME FUNDS - DELAWARE
 10 DELCHESTER FUND;
 11 DELAWARE GROUP ADVISER FUNDS -
 12 DELAWARE DIVERSIFIED INCOME FUND;
 13 DELAWARE POOLED TRUST - THE HIGH YIELD
 14 BOND PORTFOLIO;
 15 DELAWARE GROUP INCOME FUNDS - DELAWARE
 16 HIGH-OPPORTUNITIES FUND;
 17 OPTIMUM FUND TRUST - OPTIMUM FIXED
 18 INCOME FUND;
 19 DELAWARE VIP TRUST - DELAWARE VIP
 20 DIVERSIFIED INCOME SERIES; DELAWARE VIP
 21 TRUST - DELAWARE VIP HIGH YIELD SERIES;
 22 DELAWARE INVESTMENTS DIVIDEND AND
 23 INCOME FUND, INC.;
 24 DELAWARE GROUP EQUITY FUNDS V -
 25 DELAWARE DIVIDEND INCOME FUND; and
 26 DELAWARE INVESTMENTS GLOBAL DIVIDEND
 27 AND INCOME FUND, INC.,
 28

Plaintiffs,

-against-

17 WACHOVIA CAPITAL MARKETS, LLC d/b/a
 18 WACHOVIA SECURITIES;
 19 ERNST & YOUNG LLP; and
 20 BDO SEIDMAN, LLP,

Defendants.

21
 22 Plaintiffs, by their attorneys Quinn Emanuel Urquhart Oliver & Hedges, LLP, for
 23 their Complaint against Defendants Wachovia Capital Markets, LLC d/b/a Wachovia Securities
 24 ("Wachovia"), Ernst & Young LLP ("E&Y"), and BDO Seidman, LLP ("BDO," and collectively
 25 with Wachovia and E&Y, the "Defendants"), allege as follows:
 26
 27
 28

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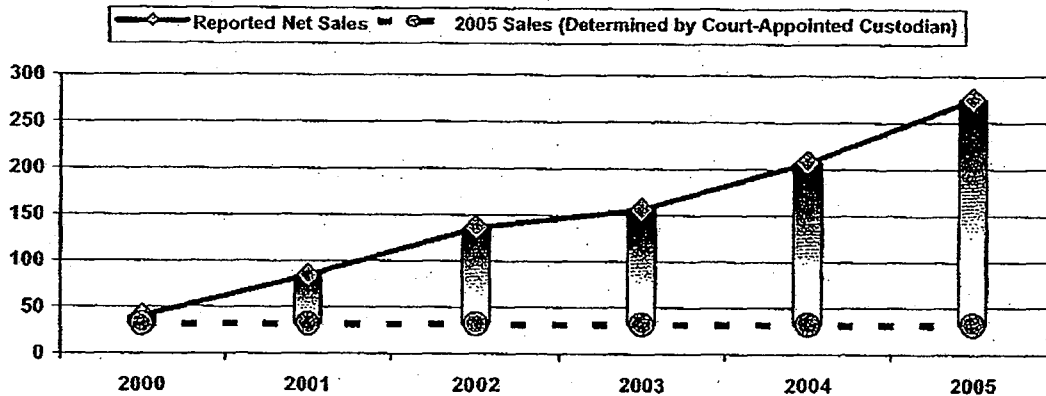
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2. Le Nature's' massive revenues inflation, which was accompanied by overstated and false profit reports, had gone on for years – a fact confirmed by the chapter 11 trustee. The Company had long been reporting sales numbers that had no relation whatsoever to its actual results. Indeed, as early as 2000, the Company was reporting revenues in excess of \$32 million, a number that it approached only years later, after the Company's production capacity was substantially enhanced with the introduction of a new facility in Phoenix, Arizona. For many years prior to completion of the Phoenix facility, the Company falsely reported revenues *well in excess of its 2005 post-expansion revenues*. The extent of the overstatement is startling:

Le Nature's -- Reported Versus Actual Sales
Millions of Dollars



3. In June 2003, several years after the Company commenced its false revenue reports, Le Nature's issued \$150 million of 9% Senior Subordinated Notes (the "Notes," and holders thereof, the "Noteholders") (the "Note Offering"). The Note Offering was underwritten and arranged by Wachovia Securities, LLC (operations that, on information and belief, are now part of Wachovia). To induce investors to purchase the Notes, the offering materials materially overstated Le Nature's' revenues and profits, wrongfully making it appear that the Company was a thriving, growing enterprise. To the contrary, even in 2003, the Company was hobbling along, surviving from year to year only by rapidly and repeatedly increasing its level of borrowings.

4. Wachovia drafted the misleading offering materials for Le Nature's, and orchestrated sales pitches to potential investors, even though its primary investment banker on the Le Nature's deal knew that the Company was hampered by severe management integrity issues. Grant Rice, the Wachovia banker in charge of the relationship, came to Wachovia from Bank of America shortly before the Note Offering. Rice was aware that Bank of America, which considered arranging a transaction for Le Nature's, ultimately refused to do so when it learned of management's suspect practices. Undeterred, however, Rice moved the Le Nature's relationship to Wachovia, where he and his new colleagues seized the opportunity to work with Le Nature's in

1 order to build up Wachovia's fledgling high-yield debt business, to garner substantial fees for
2 Wachovia, and to bring in a client that would require multiple financings in successive years.

3 5. Indeed, Wachovia's own sales division, having been warned that Le Nature's'
4 management was untrustworthy, resisted the Note Offering, and raised a series of questions to its
5 investment banking counterpart within Wachovia. The sales division knew that it would be called
6 upon to respond to investor inquiries when Le Nature's fell apart. The investment bankers,
7 however, pushed the deal through, telling their colleagues within Wachovia simply to trust them
8 and not to raise further questions.

9 6. Wachovia's participation in the Le Nature's fraud was not limited to arranging and
10 marketing the Note Offering. Rather, over the following several years, Wachovia repeatedly
11 issued market analysis reports assigning an "outperform" rating to Le Nature's – thereby
12 indicating that it was a solid company and a good investment. By issuing these reports, Wachovia
13 was able to maintain a high and stable market price for Le Nature's bonds. But Wachovia knew
14 its reports were wrong.

15 7. From before the Note Offering until the demise of Le Nature's, Wachovia was a
16 trusted advisor and confidant to the Company and its executives, and secured tens of millions of
17 dollars in fees over those years by structuring, underwriting, syndicating, and managing (both
18 directly and through its affiliates) at least six Le Nature's bank facilities and securities issuances.
19 Together with Le Nature's' management, Wachovia also engaged in extensive efforts, over several
20 years, to sell the Company, a process through which Wachovia's investment bankers learned even
21 more details about the Company's fraudulent reporting and management practices. For many
22 years, Wachovia served as Le Nature's' facilitator and arranger for all major financial
23 undertakings.

24 8. Among other things, Wachovia knew – but hid from the Noteholders and the bond
25 market – that (i) almost immediately following issuance of the Notes, Le Nature's convened a
26 special committee to investigate the sudden resignation of the Company's chief financial officer
27 and other senior financial managers, who left the Company because of the fraud being committed
28 by the CEO and other executives, resulting in a report identifying serious issues with the

1 Company's financial reporting and with the CEO's unchecked control over *all* of the Company's
2 operations, (ii) Le Nature's systematically had been unable to make timely interest payments on its
3 bank credit facilities, a fact that Wachovia hid by having its affiliate bank covertly front the
4 payments for Le Nature's, (iii) Le Nature's was reporting sales data that could not possibly be
5 accurate based on information readily available to, but purposefully ignored by, Wachovia, (iv) Le
6 Nature's' management was habitually dismissive of requests for information and disregarded
7 specific mandates to improve accounting, inventory, and other financial safeguards, (v) Le
8 Nature's' products were being pulled from the shelves at retailers, and (vi) in 2005, Le Nature's
9 improperly recorded more than \$200 million in capital leases as operating leases, thereby
10 removing these massive liabilities from its balance sheet. Wachovia knew that Le Nature's was
11 engaging in fraud. But none of this information, all of which was material and known to
12 Wachovia, was disclosed to the Noteholders or the bond market.

13 9. Wachovia knew that, had the real situation at Le Nature's — i.e., its dire financial
14 state and corrupt management — been revealed from the outset, the Note Offering never could have
15 been completed. And, had Wachovia been honest in its post-offering disclosures, the price of the
16 Notes would have plummeted. But Wachovia had a strong motivation to hide the true facts, and
17 thereby to artificially maintain the inflated price of the Notes. By hiding the true state of affairs at
18 Le Nature's, Wachovia was able to perpetuate the Company's existence, as well as its constant
19 demand for cash infusions, thereby ensuring ever increasing fees for Wachovia from (i) arranging
20 and syndicating multiple new credit facilities for Le Nature's, and (ii) marketing the Company for
21 sale to a third-party investor. Wachovia also used Le Nature's to bolster its high-yield debt
22 resumé, further breaking into a market in which Wachovia had been struggling to obtain exposure.

23 10. Wachovia was not alone in defrauding, and in assisting Le Nature's to defraud, the
24 Noteholders. E&Y, Le Nature's' purportedly independent outside auditor at the time of the Note
25 Offering, issued clean audit opinions for Le Nature's' 2000, 2001, and 2002 financial statements,
26 even though those statements dramatically overstated the Company's revenues, profits, and
27 inventories. In issuing its audit report, E&Y improperly relied on the Company's internal
28 controls, even though E&Y knowingly failed to perform any testing of certain critical controls.

1 And E&Y failed to perform any substantive testing on crucial elements of the financial statements,
2 including revenues and expenses, enabling fraudulent misrepresentation of the most important
3 aspects of financial performance. E&Y confirmed, for example, bulk tea inventories that were
4 overstated by more than 2800%, even though E&Y knew about the suspicious nature of Le
5 Nature's' tea purchases and sales, and the segregation of these operations from the Company's
6 core beverage business.

7 11. There can be no question that the Noteholders relied upon, and that E&Y
8 specifically intended them to rely upon, the audit report. The audited financials – together with
9 E&Y's report – were appended directly to the Offering Memorandum used to market the Notes.
10 Simply put, E&Y's audit report was part of the marketing package.

11 12. E&Y compounded the misrepresentations included in its audit report by knowingly
12 failing to rescind or correct the report after Le Nature's' chief financial officer resigned and a
13 special committee issued a report identifying fraudulent conduct in the very areas that E&Y
14 reviewed in issuing its audit opinions. Indeed, the CFO spoke with the head of E&Y's audit team
15 when he resigned, and the two discussed the fraudulent activity at Le Nature's. E&Y knew that its
16 audit report contained false statements, and it knew that the statements were false at the time the
17 report was issued, but it failed to advise the Noteholders that the audit opinions were flawed and
18 that the financial statements included in the Offering Memorandum were materially misstated.

19 13. After the abrupt departure of Le Nature's' chief financial officer in August 2003,
20 BDO stepped in as Le Nature's' outside auditor. Continuing the course charted by E&Y, BDO
21 confirmed financial statements for the years 2003, 2004, and 2005 that materially overstated Le
22 Nature's' revenues and profits, and materially understated the Company's liabilities and expenses.
23 For the year ended 2005, for example, BDO issued a clean audit opinion to accompany Le
24 Nature's' financial statements – the very statements that falsely reflected net sales in excess of
25 \$275 million (nearly ten times the sales levels determined by the court-appointed custodian and
26 the chapter 11 trustee). BDO also assisted Le Nature's in misclassifying its massive capital lease
27 obligations as operating leases, thereby keeping more than \$200 million of liabilities off the
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1 Company's balance sheet, and in hiding rental expenses for production equipment, thereby further
2 overstating the Company's net income.

3 14. Over the course of five audit years, E&Y and BDO ignored numerous glaring red
4 flags demonstrating Le Nature's' falsification efforts, assisted in the inflation of assets and
5 misclassification of liabilities, and issued reports – which they knew the Noteholders would rely
6 upon – confirming and validating the misstated results. The stamps of approval issued by these
7 major auditing firms were key components of the fraud perpetrated on the Noteholders.

8 15. As a result of the fraud perpetrated by Le Nature's, its executives, Wachovia, and
9 the two auditing firms, the Notes were substantially overpriced from the day of their issuance in
10 June 2003 until the public revelation of the Company's fraud at the outset of November 2006.
11 Immediately upon disclosure of the fraud, the Notes tumbled in value, causing the immediate loss
12 of the vast majority of the Noteholders' investments. Each Plaintiff in this action purchased the
13 Notes, either as an initial purchaser when the Notes were first issued or otherwise before the
14 public revelation of the fraud. Many of the Plaintiffs purchased their Notes directly from
15 Wachovia. All Plaintiffs paid par value – or more – for their Notes. All Plaintiffs ultimately sold
16 their notes at substantially lower prices after Le Nature's was forced into bankruptcy. As a result,
17 Plaintiffs suffered, and Defendants should be held liable for, aggregate losses in excess of \$70
18 million.

19 16. Many of the Defendants in this action already have produced documents to the
20 chapter 11 trustee and other parties in connection with the Le Nature's bankruptcy proceedings.
21 Those documents provide further details regarding Defendants' fraudulent activities. The
22 allegations in this Complaint, however, are not based on documents produced in the bankruptcy
23 cases that have been designated as "confidential" by the producing parties. When those
24 documents become available for use in this proceeding, Plaintiffs will amend this Complaint to
25 provide further details regarding Defendants' knowledge and conduct.

PARTIES, JURISDICTION, AND VENUE

Plaintiffs

17. California Public Employees' Retirement System ("CalPERS") is a public pension plan organized under the laws of California. CalPERS sold its notes on or about November 1, 2006 at a loss.

18. Los Angeles City Employees' Retirement System is a California public pension fund that purchased Notes on or about February 10, 2006. Los Angeles City Employees' Retirement System sold its Notes on or about November 1, 2006 at a loss.

19. Southwest Carpenters Pension Trust is a California pension plan that purchased Notes on or about October 21, 2005, December 22, 2005, April 11, 2006, July 19 and 25, 2006, and August 24, 2006. Southwest Carpenters Pension Trust sold its Notes on or about November 1, 2006 at a loss.

20. Sheet Metal Workers Pension Plan of Northern California is a trust that purchased Notes on or about November 7, 2003 and February 15, 2005. Sheet Metal Workers Pension Plan of Northern California sold its Notes on or about November 9 and 10, 2006 at a loss.

21. American General Life and Accident Insurance Company is a Tennessee corporation that purchased Notes on or about June 3, 2005. American General Life and Accident Insurance Company sold its Notes on or about November 1, 2 and 6, 2006 at a loss.

22. American General Life Insurance Company is a Texas corporation that purchased Notes on or about June 3, 2005, April 26, 2006, May 2 and 4, 2006, June 2, 2006, July 28, 2006, and September 6, 2006. American General Life Insurance Company sold its Notes on or about November 1, 2 and 6, 2006 at a loss.

23. AIG Annuity Insurance Company is a Texas corporation that purchased Notes on or about June 3, 2005, April 26, 2006, May 2 and 4, 2006, and June 2, 2006. AIG Annuity Insurance Company sold its Notes on or about November 1, 2 and 6, 2006 at a loss.

24. AIG Life Insurance Company is a Delaware corporation that purchased Notes on or about June 3, 2005. AIG Life Insurance Company sold its Notes on or about November 1, 2 and 6, 2006 at a loss.

1 25. AIG Strategic Bond Fund is an Irish UCITS¹ that purchased Notes on or about
2 June 2, 2006. AIG Strategic Bond Fund sold its Notes on or about November 1 and 6, 2006 at a
3 loss.

4 26. American International Life Assurance Company of New York is a New York
5 corporation that purchased Notes on or about April 26, 2006, May 2 and 4, 2006, June 2, 2006,
6 and September 6, 2006. American International Life Assurance Company of New York sold its
7 Notes on or about November 1, 2 and 6, 2006 at a loss.

8 27. American International Group Retirement Plan is a Delaware corporation that
9 purchased Notes on or about June 3, 2005, May 2 and 4, 2006, June 2, 2006, and September 6,
10 2006. American International Group Retirement Plan sold its Notes on or about November 1, 2
11 and 6, 2006 at a loss.

12 28. AIG US High Yield Bond Fund is a Japanese commingled trust that purchased
13 Notes on or about June 3, 2005 and May 2, 2006. AIG US High Yield Bond Fund sold its Notes
14 on or about November 2 and 6, 2006 at a loss.

15 29. AIG US High Yield Bond Fund is an Irish UCITS that purchased Notes on or about
16 March 27, 2006. AIG US High Yield Bond Mother Fund sold its Notes on or about November 1,
17 2 and 6, 2006 at a loss.

18 30. Beatrice High Yield Cayman Unit Trust is a Cayman Islands unit trust that
19 purchased Notes on or about May 2 and 4, 2006 and September 6, 2006. Beatrice High Yield
20 Cayman Unit Trust sold its Notes on or about November 1, 2 and 6, 2006 at a loss.

21 31. Seasons Series Trust Strategic Bond Fund is a Massachusetts business trust that
22 purchased Notes on or about October 14 and 18, 2005 and June 2, 2006. Seasons Series Trust
23 Strategic Bond Fund sold its Notes on or about November 1, 2 and 6, 2006 at a loss.

24 32. Variable Annuity Life Insurance Company II Strategic Bond Fund is a Delaware
25 business trust that purchased Notes on or about June 3, 2005, October 14 and 18, 2005, and
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28 ¹ UCITS is an acronym for Undertakings for Collective Investment in Transferable Securities.

1 June 2, 2006. Variable Annuity Life Insurance Company II Strategic Bond Fund sold its Notes on
2 or about November 1, 2 and 6, 2006 at a loss.

3 33. Variable Annuity Life Insurance Company II High Yield Bond Fund is a Delaware
4 business trust that purchased Notes on or about June 3, 2005, October 14 and 18, 2005, and
5 June 2, 2006. Variable Annuity Life Insurance Company II High Yield Bond Fund sold its Notes
6 on or about November 1, 2 and 6, 2006 at a loss.

7 34. SunAmerica Income Funds High Yield Bond Fund is a Massachusetts business
8 trust that purchased Notes on or about June 3, 2005 and October 14 and 18, 2005. SunAmerica
9 Income Funds High Yield Bond Fund sold its Notes on or about November 1, 2 and 6, 2006 at a
10 loss.

11 35. SunAmerica Series Trust High Yield Bond Portfolio is a Massachusetts business
12 trust that purchased Notes on or about June 3, 2005 and October 14 and 18, 2005. SunAmerica
13 Series Trust High Yield Bond Portfolio sold its Notes on or about November 1, 2 and 6, 2006 at a
14 loss.

15 36. SunAmerica Income Funds Strategic Bond Fund is a Massachusetts business trust
16 that purchased Notes on or about June 3, 2005, October 14 and 18, 2005, and June 2, 2006.
17 SunAmerica Income Funds Strategic Bond Fund sold its Notes on or about November 1, 2 and 6,
18 2006 at a loss.

19 37. The United States Life Insurance Company is a New York corporation that
20 purchased Notes on or about April 26, 2006, May 2 and 4, 2006, June 2, 2006, and September 6,
21 2006. The United States Life Insurance Company sold its Notes on or about November 1, 2 and 6,
22 2006 at a loss.

23 38. Automotive Industries Pension Trust Fund is a trust that purchased Notes on or
24 about May 20, 2004 and February 15, 2005. Automotive Industries Pension Trust Fund sold its
25 Notes on or about November 9 and 10, 2006 at a loss.

26 39. Eclipse Funds Inc. is a Maryland corporation that purchased Notes on or about
27 February 10, 2006. Eclipse Funds Inc. sold its Notes on or about November 9 and 10, 2006 at a
28 loss.

1 40. McMorgan Funds is a Delaware business trust that purchased Notes on or about
2 November 7, 2003, May 20, 2004, February 15, 2005, and February 10, 2006. McMorgan Funds
3 sold its Notes on or about November 9 and 10, 2006 at a loss.

4 41. New York Life Insurance and Annuity Corporation is a Delaware corporation that
5 purchased Notes on or about June 18 and 19, 2003, November 7, 2003, May 20, 2004, and
6 February 10, 2006. New York Life Insurance and Annuity Corporation sold its Notes on or about
7 November 9 and 10, 2006 at a loss.

8 42. New York Life Insurance Company is a New York mutual life insurance company
9 that purchased Notes on or about June 18 and 19, 2003, May 20, 2004, and February 10, 2006.
10 New York Life Insurance Company sold its Notes on or about November 9 and 10, 2006 at a loss.

11 43. New York Life Insurance Company High Yield Separate Account is a New York
12 insurance separate account that purchased Notes on or about October 7, 2003, May 20, 2004, and
13 February 15, 2005. New York Life Insurance Company High Yield Separate Account sold its
14 Notes on or about November 9 and 10, 2006 at a loss.

15 44. Finch Tactical Plus Class B is a Cayman Islands corporation that purchased Notes
16 on or about April 18, 2006. Finch Tactical Plus Class B sold its Notes on or about April 25, 2007
17 and May 2, 2007 at a loss.

18 45. ALTMA Fund SICAV PLC in respect of The Grafton Sub Fund is a Malta
19 corporation that purchased Notes on or about April 18, 2006. ALTMA Fund SICAV PLC in
20 respect of The Grafton Sub Fund sold its Notes on or about April 25, 2007 and May 2, 2007 at a
21 loss.

22 46. Context Advantage Master Fund, LP is a Cayman Islands limited partnership that
23 purchased Notes on or about April 18, 2006. Context Advantage Master Fund, LP sold its Notes
24 on or about April 25, 2007 and May 2, 2007 at a loss.

25 47. Institutional Benchmarks Series (Master Feeder) Limited in respect of Alcor Series
26 is a Bermuda corporation that purchased Notes on or about April 18, 2006. Institutional
27 Benchmarks Series (Master Feeder) Limited in respect of Alcor Series sold its Notes on or about
28 April 25, 2007 and May 2, 2007 at a loss.

1 48. Worldwide Transactions Limited is a Cayman Islands corporation that purchased
2 Notes on or about April 18, 2006. Worldwide Transactions Limited sold its Notes on or about
3 April 25, 2007 and May 2, 2007 at a loss.

4 49. Lehman Brothers First Trust Income Opportunity Fund Inc. is a Delaware business
5 trust that purchased Notes on or about February 10, 2006. Lehman Brothers First Trust Income
6 Opportunity Fund Inc. sold its Notes on or about November 1, 2006 at a loss.

7 50. Lehman Brothers Alpha Funds PLC for Lehman Brothers U.S. High Yield Fund is
8 an Irish UCITS that purchased Notes on or about May 9, 2006. Lehman Brothers Alpha Funds
9 PLC for Lehman Brothers U.S. High Yield Fund sold its Notes on or about November 1, 2006 at a
10 loss.

11 51. Lehman Brothers High Yield Bond Fund LLC is a Delaware limited liability
12 corporation that purchased Notes on or about February 10, 2006 and August 29, 2006. Lehman
13 Brothers High Yield Bond Fund LLC sold its Notes on or about November 1, 2006 at a loss.

14 52. Neuberger Berman Advisers Management Trust for Lehman Brothers High Income
15 Bond Fund is a Delaware business trust that purchased Notes on or about July 31, 2006 and
16 August 29, 2006. Neuberger Berman Advisers Management Trust for Lehman Brothers High
17 Income Bond Fund sold its Notes on or about November 1, 2006 at a loss.

18 53. Lehman Brothers Income Funds for Lehman Brothers High Income Bond Fund is a
19 Delaware business trust that purchased Notes on or about July 31, 2006 and August 29, 2006.
20 Lehman Brothers Income Funds for Lehman Brothers High Income Bond Fund sold its Notes on
21 or about November 1, 2006 at a loss.

22 54. Lehman Brothers Income Funds for Lehman Brothers Strategic Income Fund is a
23 Delaware business trust that purchased Notes on or about July 31, 2006 and August 29, 2006.
24 Lehman Brothers Income Funds for Lehman Brothers Strategic Income Fund sold its Notes on or
25 about November 1, 2006 at a loss.

26 55. Neuberger Berman Income Opportunity Fund Inc. is a Maryland corporation that
27 purchased Notes on or about February 10, 2006 and August 29, 2006. Neuberger Berman Income
28 Opportunity Fund Inc. sold its Notes on or about November 1, 2006 at a loss.

1 56. Automobile Club Insurance Association is a Michigan Corporation that purchased
2 Notes on or about February 10, 2006. Automobile Club Insurance Association sold its Notes on
3 or about November 1, 2006 at a loss.

4 57. GM Canada Foreign Trust is an Ontario trust that purchased Notes on or about
5 February 10, 2006. GM Canada Foreign Trust sold its Notes on or about November 1, 2006 at a
6 loss.

7 58. GMAM Investment Funds Trust is a New York trust that purchased Notes on or
8 about February 10, 2006. GMAM Investment Funds Trust sold its Notes on or about November 1,
9 2006 at a loss.

10 59. Motors Insurance Corporation is a Michigan corporation that purchased Notes on
11 or about February 10, 2006. Motors Insurance Corporation sold its Notes on or about November
12 1, 2006 at a loss.

13 60. Plumbers & Pipefitters National Pension Fund is a United States multi-employer
14 defined benefit fund that purchased Notes on or about February 10, 2006. Plumbers & Pipefitters
15 National Pension Fund sold its Notes on or about November 1, 2006 at a loss.

16 61. Atrium IV is a Cayman Islands corporation that purchased Notes on or about
17 January 18, 2006 and October 5, 2006. Atrium IV sold its Notes on or about November 1, 2006 at
18 a loss.

19 62. Atrium V is a Cayman Islands corporation that purchased Notes on or about July
20 28, 2006 and September 5, 2006. Atrium V sold its Notes on or about November 1, 2006 at a loss.

21 63. Castle Garden Funding is a Cayman Islands corporation that purchased Notes on or
22 about December 1, 2005 and January 18, 2006. Castle Garden Funding sold its Notes on or about
23 November 1, 2006 at a loss.

24 64. Madison Park Funding II, Ltd. is a Cayman Islands corporation that purchased
25 Notes on or about May 31, 2006 and October 5, 2006. Madison Park Funding II, Ltd. sold its
26 Notes on or about November 1, 2006 at a loss.

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1 65. Madison Park Funding III, Ltd. is a Cayman Islands corporation that purchased
2 Notes on or about October 5, 2006. Madison Park Funding III, Ltd. sold its Notes on or about
3 November 1, 2006 at a loss.

4 66. CSAM Funding I, Ltd., is a Cayman Islands corporation that purchased Notes on or
5 about January 18, 2006. CSAM Funding I sold its Notes on or about November 1, 2006 at a loss.

6 67. Credit Suisse Syndicated Loan Fund is an Australian investment trust that
7 purchased Notes on or about September 19 and 22, 2005. Credit Suisse Syndicated Loan Fund
8 sold its Notes on or about November 1, 2006 at a loss.

9 68. Credit Suisse High Yield Fund is an Australian investment trust that purchased
10 Notes on or about June 13, 2005 and December 1, 2005. Credit Suisse High Yield Fund sold its
11 Notes on or about November 1, 2006 at a loss.

12 69. SEI Institutional Managed Trust – High Yield Bond Fund is a Massachusetts
13 business trust that purchased Notes on or about December 22, 2005 and July 19 and 25, 2006. SEI
14 Institutional Managed Trust – High Yield Bond Fund sold its Notes on or about November 1, 2006
15 at a loss.

16 70. SEI Institutional Investments Trust – High Yield Bond Fund is a is a Massachusetts
17 business trust that purchased Notes on or about November 12, 2003, December 1 and 5, 2003,
18 February 2, 2004, April 27, 2004, June 3 and 17, 2004, October 21, 2005, December 22, 2005, and
19 July 19 and 25, 2006. SEI Institutional Investments Trust – High Yield Bond Fund sold its Notes
20 on or about November 1, 2006 at a loss.

21 71. SEI Global Master Fund – High Yield Bond Fund is an Irish limited liability
22 investment company that purchased Notes on or about September 22, 2005, October 21, 2005,
23 April 11, 2006, July 19 and 25, 2006, and August 24, 2006. SEI Global Master Fund – High Yield
24 Bond Fund sold its Notes on or about November 1, 2006 at a loss.

25 72. Stichting Pensioenfond Metaal en Techniek is a Netherlands pension plan that
26 purchased Notes on or about July 1, 2003, March 30, 2004, October 21, 2004, and July 19 and 25,
27 2006. Stichting Pensioenfond Metaal en Techniek sold its Notes on or about November 1, 2006
28 at a loss.

1 73. General Motors Welfare Benefits Trust is a Michigan trust that purchased Notes on
2 or about January, 3, 2005, October 21, 2005, December 22, 2005, July 19 and 25, 2006, and
3 August 29, 2006. General Motors Welfare Benefits Trust sold its Notes on or about November 1,
4 2006 at a loss.

5 74. The Nature Conservancy is a District of Columbia non-profit corporation that
6 purchased Notes on or about December 1 and 5, 2003. The Nature Conservancy sold its Notes on
7 or about November 1, 2006 at a loss.

8 75. Stichting Bedrijfstakpensioenfondsvoor de Metalektro is a Netherlands pension
9 plan that purchased Notes on or about December 1 and 5, 2003, February 2, 2004, March 31,
10 2004, April 27, 2004, January 3, 2005, September 22, 2005, December 22, 2005, April 11, 2006,
11 July 19 and 25, 2006, and August 29, 2006. Stichting Bedrijfstakpensioenfondsvoor de
12 Metalektro sold its Notes on or about November 1, 2006 at a loss.

13 76. The Alaska Retirement Management Board is the fiduciary of the assets of the
14 Alaska Public Employees Retirement System and the Alaska Teachers Retirement System. The
15 Alaska Retirement Management Board purchased Notes on or about April 18, 2005, December 22,
16 2005, April 11, 2006, July 19 and 25, 2006, and August 24, 2006. The Alaska Retirement
17 Management Board sold its Notes on or about November 1, 2006 at a loss.

18 77. Bowsprit Offshore Ltd. is a British Virgin Islands corporation that purchased Notes
19 on or about June 18, 2003, December 5, 2003, and June 3, 2004. Bowsprit Offshore Ltd. sold its
20 Notes on or about November 1, 2006 at a loss.

21 78. ING (L) Selected Strategies SICAV - High Yield Sub Fund is a Luxembourg UCITS
22 that purchased Notes on or about February 20, 2004, April 18, 2005, December 22, 2005, April
23 11, 2006, July 19 and 25, 2006, and August 24, 2006. ING (L) Selected Strategies SICAV - High
24 Yield Sub Fund sold its Notes on or about November 1, 2006 at a loss.

25 79. High Yield Common Trust is a Connecticut trust fund that purchased Notes on or
26 about October 21, 2005, December 22, 2005, April 11, 2006, and August 24, 2006. High Yield
27 Common Trust sold its Notes on or about November 1, 2006 at a loss.

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1 80. High Yield Collective Trust is a Connecticut trust fund that purchased Notes on or
2 about October 21, 2005, December 22, 2005, April 11, 2006, July 19 and 25, 2006, and August
3 24, 2006. High Yield Collective Trust sold its Notes on or about November 1, 2006 at a loss.

4 81. Delaware Group Equity Funds I - Delaware Balanced Fund is a Delaware statutory
5 trust that sold its Notes on about November 29, 2006, and December 4, 2006 at a loss.

6 82. Delaware Group Income Funds - Delaware Delchester Fund is a Delaware statutory
7 trust that sold its Notes on or about November 29, 2006, and December 4, 2006 at a loss.

8 83. Delaware Group Adviser Funds - Delaware Diversified Income Fund is a Delaware
9 statutory trust that sold its Notes on or about November 29, 2006, and December 4, 2006 at a loss.

10 84. Delaware Pooled Trust - The High Yield Bond Portfolio is a Delaware statutory
11 trust that sold its Notes on or about November 29, 2006, and December 4, 2006 at a loss.

12 85. Delaware Group Income Funds - Delaware High Yield Opportunities Fund is a
13 Delaware statutory trust that sold its Notes on or about November 29, 2006, and December 4,
14 2006 at a loss.

15 86. Optimum Fund Trust - Optimum Fixed Income Fund is a Delaware statutory trust
16 that sold its Notes on or about November 29, 2006, and December 4, 2006 at a loss.

17 87. Delaware VIP Trust - Delaware VIP Diversified Income Series is a Delaware
18 statutory trust that sold its Notes on or about November 29, 2006, and December 4, 2006 at a loss.

19 88. Delaware VIP Trust - Delaware VIP High Yield Series is a Delaware statutory trust
20 that sold its Notes on or about November 29, 2006, and December 4, 2006 at a loss.

21 89. Delaware Investments Dividend and Income Fund, Inc., is a Maryland corporation
22 that sold its Notes on or about November 29, 2006 at a loss.

23 90. Delaware Group Equity Funds V - Delaware Dividend Income Fund is a Delaware
24 statutory trust that sold its Notes on or about November 29, 2006, and December 4, 2006 at a loss.

25 91. Delaware Investments Global Dividend and Income Fund, Inc., is a Maryland
26 corporation that sold its Notes on or about November 29, 2006 at a loss.

1 **Defendants**

2 92. Wachovia is a Delaware limited liability company that conducts substantial
3 business and maintains an office in California. According to its website, Wachovia offers "debt
4 and equity underwriting, trading, research and sales, loan syndications agent services, and
5 corporate finance and M&A advisory services." Wachovia provides these services under the trade
6 name "Wachovia Securities," which is the trade name for all of the corporate and investment
7 banking services of Wachovia Corporation and its subsidiaries (including Wachovia Capital
8 Markets, LLC). At all times relevant to this Complaint, Wachovia was the principal investment
9 banker and financial advisor to Le Nature's, and it arranged, promoted, and performed other
10 services in connection with multiple credit facilities and securities issuances for Le Nature's,
11 totaling hundreds of millions of dollars. Wachovia arranged, promoted, and underwrote the Note
12 Offering specifically at issue in this action.

13 93. E&Y is a Delaware limited liability partnership that conducts substantial business
14 in, has partners located in, and maintains several offices in California. E&Y was Le Nature's'
15 outside accountant and auditor for the year 2002, and was retained to re-audit Le Nature's'
16 financial statements for the years 2000 and 2001. Accordingly, E&Y issued an audit report with
17 respect to Le Nature's' financial statements for the years ended December 31, 2000, 2001 and
18 2002.

19 94. BDO is a New York limited liability partnership that conducts substantial business
20 in, has partners in, and maintains several offices in California. BDO was Le Nature's' outside
21 accountant and auditor for the years 2003 through 2006, and issued audit reports with respect to
22 Le Nature's' financial statements for the years ended December 31, 2003, 2004, and 2005.

23 **Selected Relevant Non-Parties**

24 95. Le Nature's is a Delaware corporation with its principal place of business in
25 Latrobe, Pennsylvania. Le Nature's was in the business of manufacturing, bottling, and
26 distributing an array of non-carbonated beverages. Le Nature's was placed in involuntary
27 bankruptcy on November 1, 2006.

28

1 96. Gregory J. Podlucky ("Podlucky") is an individual who resides in Pennsylvania.
 2 At all times relevant hereto, he was the majority and controlling shareholder of Le Nature's and its
 3 Chairman and Chief Executive Officer.

4 97. Robert Lynn ("Lynn") is an individual who resides in Pennsylvania. At all times
 5 relevant hereto, he was an Executive Vice President of Le Nature's and was Podlucky's nominee
 6 to, and a member of, Le Nature's' Board of Directors.

7 98. Jonathan Podlucky ("Jonathan Podlucky"), the brother of Gregory Podlucky, is an
 8 individual who resides in Pennsylvania. At all times relevant hereto, he was the Chief Operating
 9 Officer of Le Nature's and was Podlucky's nominee to, and a member of, Le Nature's' Board of
 10 Directors.

11 99. Andrew Murin ("Murin") is an individual who resides in Pennsylvania. At all
 12 times relevant hereto, he was Podlucky's nominee to, and a member of, Le Nature's' Board of
 13 Directors. Podlucky, Lynn, Jonathan Podlucky, and Murin are referred to collectively as the "Le
 14 Nature's Executives."

15 Venue

16 100. Venue is proper here as all Defendants maintain offices here and both E&Y and
 17 BDO have identified addresses within Los Angeles County for service of process within the state
 18 of California.

19 BACKGROUND

20 History of Le Nature's: A Rapid Rise and Dramatic Fall

21 101. Le Nature's was founded by Podlucky in 1989 and produced its first product – a
 22 carbonated flavored water called Le*Nature's Sparkler – in 1992. Within a year, the Company
 23 expanded its line of products to include iced teas, lemonades, and a juice-based line of drinks
 24 called Dazzlers. By 2005, the Company claimed to be producing nearly 60 different non-
 25 carbonated beverage products.

26 102. Le Nature's styled itself an innovator in the beverage industry and touted its alleged
 27 use of cutting-edge technologies and distribution methods. In the 1990s, Le Nature's purported to
 28 be one of the first beverage companies to move its products into environmentally safer PET plastic

bottles, to patent a method by which beverages could be pasteurized in the bottle itself, and to develop new technologies for brewing iced tea. Indeed, Le Nature's described itself as having "one of America's most advanced beverage manufacturing facilities."

103. According to its annual financial statements, public pronouncements, and marketing materials, Le Nature's was a remarkably successful company. The growth in its array of products was purportedly coupled with even more impressive growth in its gross sales, net sales, and profits. The year-to-year increases in financial performance were purportedly as follows:

<u>Year</u>	<u>Reported Gross Sales</u>	<u>Reported Net Sales</u>	<u>Reported Net Income</u>
2000*	\$40,658,000	\$40,405,000	\$953,000
2001*	\$85,094,000	\$83,961,000	\$1,350,000
2002	\$143,766,705	\$135,650,095	\$9,458,809
2003	\$179,905,164	\$155,746,687	\$13,268,578
2004	\$228,812,363	\$207,069,179	\$22,010,988
2005	\$287,233,880	\$275,089,169	\$22,916,977

*Indicated amounts for 2000 and 2001 are rounded to the nearest thousand.

104. In 2005, Le Nature's commenced operations at a new, 500,000 square foot state-of-the-art facility in Phoenix, Arizona. The new facility substantially expanded Le Nature's' production capacity, enabling (according to the Company) the production of 32 million more cases per year. According to the Company, in a presentation that its executives and Wachovia representatives made to potential lenders, by December 2005 Le Nature's had "expanded from 1 production facility with a total of 2 lines in 2003, to currently 2 production facilities with a total of 7 lines in operation."

105. The reported financial information, as well as the news of expanded production capacity and plans for additional facilities, falsely painted the picture of a booming company. In May 2006, however, several minority shareholders in the Company – essentially, early investors who provided seed capital in exchange for preferred shares of stock and representation on the board of directors – initiated an action in Delaware Chancery Court against Le Nature's and four of its inside directors (Podlucky, Jonathan Podlucky, Murin, and Lynn) (the "Delaware Action"). The Delaware Action involved various corporate governance disputes, including claims against

1 the inside directors for failing to actively maximize value and pursue a sale of the company in a
2 manner consistent with their fiduciary duties.

3 106. In the Delaware Action, the minority preferred shareholders obtained several orders
4 prohibiting the inside directors from, *inter alia*, incurring non-ordinary capital expenditures and
5 performing certain actions without the board of directors' unanimous consent. In June 2006, the
6 Chancery Court entered a preliminary injunction restraining the Company from taking certain
7 steps, such as making capital expenditures outside the ordinary course of business, without the
8 minority shareholders' approval. On October 20, 2006, the Court issued an order prohibiting the
9 inside directors from accessing, tampering with, or destroying any Company property, books, or
10 records.

11 107. Months after filing their initial complaint seeking the restraining order and the
12 appointment of a custodian to preserve Le Nature's assets, the Company's minority preferred
13 shareholders were advised that, through the use of forged documents, Le Nature's had converted
14 funds placed on deposit by one of its lessors. Specifically, AIG Commercial Equipment Finance,
15 Inc. ("AIG") had agreed to provide equipment lease financing for production lines at a planned
16 Florida facility. To that end, in late 2005 and early 2006, AIG deposited approximately \$26
17 million with Krones, Inc., the equipment manufacturer. When AIG sent a representative to the
18 Krones plant to inspect the equipment, it learned that manufacturing had barely begun, and that
19 Krones had forwarded nearly \$20 million of AIG's deposit to Le Nature's, supposedly based on
20 written instructions from AIG. Having given no such instruction, AIG asked for copies of the
21 relevant documents. Among other documents, Krones produced a letter, purportedly written on
22 AIG letterhead and purportedly signed by AIG, authorizing release of funds to Le Nature's.
23 According to AIG, the letter was a forgery, and AIG retained an expert opinion attesting to the
24 letter's falsification.

25 108. Following revelation of the forgery, on October 27, 2006, the Delaware Chancery
26 Court approved the minority preferred shareholders' request for the appointment of a custodian
27 and appointed Kroll Zolfo Cooper ("KZC") as custodian for Le Nature's. KZC took possession
28 and control of the company that same day at 5:30 p.m. Over the next few days, several Company

1 employees informed KZC that they had witnessed individuals, including Podlucky, shredding
2 documents. An accounting employee advised KZC that false entries were made in order to meet
3 revenue targets and that the 2005 audited financial statements were based on falsified information.
4 KZC also was advised that over the weekend of October 21 and 22, 2006, a dump truck arrived at
5 the Company and unloaded a large volume of documents into the trash compactor, and that several
6 employees witnessed Podlucky's personal bodyguard depositing various bundles of documents
7 into the trash compactor.

8 109. On November 1, 2006, Steven G. Panagos, a KZC managing director, filed an
9 affidavit with the Delaware Chancery Court detailing some of KZC's findings in its first few days
10 at Le Nature's. Among other things:

- 11 • Information at the Company indicated that actual 2005 revenues were as low as \$32
12 million, as compared to the \$275 million reported in Le Nature's' audited financial
13 statements;
- 14 • Significant discrepancies existed between customer shipment and accounts receivable
15 information located at the Company and the Company's (a) 2005 audited financial
16 statements, and (b) unaudited financial statements as of June 30, 2006;
- 17 • Le Nature's had \$1.8 million in available cash reserves, against which it had \$2.9 million
18 in outstanding checks; and
- 19 • Vendors were making demands on the Company for past due payments in excess of \$10
20 million.

21 110. The custodian's findings clearly indicated that Le Nature's had engaged in massive
22 overstatement of its revenues, not only for 2005 but for many years leading up to the Company's
23 bankruptcy. The meager \$32 million in revenues (as determined by the custodian) was achieved
24 only *after* the Company brought into operation several of its production lines at the brand new
25 Phoenix facility.

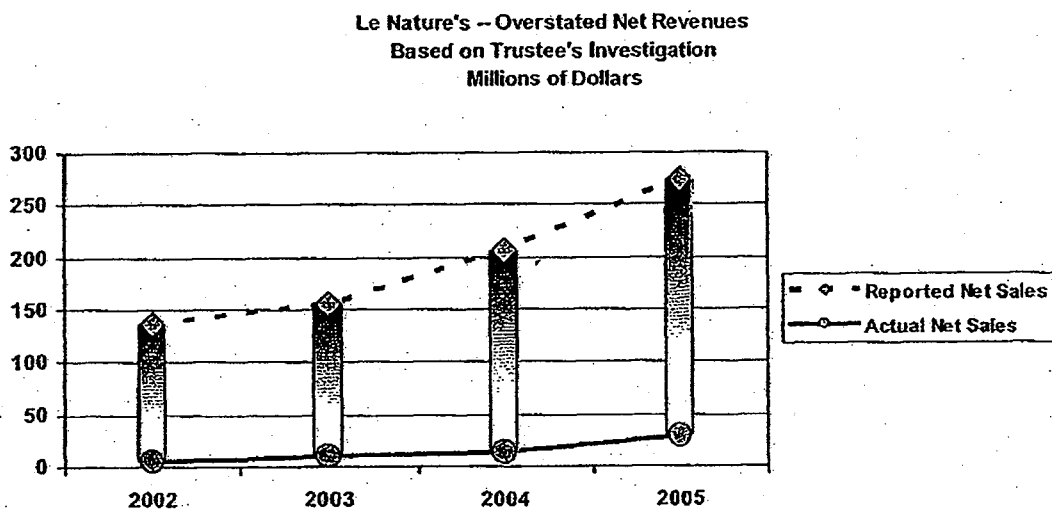
26 111. On November 1, 2006, several of Le Nature's' creditors initiated involuntary
27 bankruptcy liquidation proceedings under Chapter 7 of the Bankruptcy Code. On November 3,
28 2006, the Bankruptcy Court for the Western District of Pennsylvania put Le Nature's into chapter
11 bankruptcy, thereby giving the Company an opportunity to reorganize.

112. Almost immediately after the initiation of bankruptcy proceedings, Le Nature's ceased operations at its Phoenix facility. On November 13, 2006, employees who reported to work at the Latrobe plant were sent home and told that the plant would be temporarily closed. Production never resumed.

113. Since initiation of the bankruptcy proceedings, the chapter 11 trustee, together with his consultants and advisors, has initiated an intensive investigation regarding Le Nature's' actual revenues during the years 2002 through 2005. The investigation, which is ongoing, has been more detailed than the preliminary investigation performed by the custodian. In part, the investigation has been undertaken to submit amended tax returns for those years that reflect Le Nature's' actual revenues, rather than the inflated revenues reported by Le Nature's, Wachovia, and the company's auditors. The results, which are reflected in signed tax returns submitted by the trustee, demonstrate the magnitude of the Company's revenues overstatements:

Year	Le Nature's Reported Net Sales	Actual Net Sales (on tax returns)
2002	\$135,650,095	\$4,404,899
2003	\$155,746,687	\$9,812,559
2004	\$207,069,179	\$12,760,760
2005	\$275,089,169	\$28,284,230

Shown graphically:



114. Facts that have been publicly revealed since the filing of Le Nature's' bankruptcy indicate that the Company's seemingly constant capital raising efforts, which purportedly were to generate funds to expand the Company's production and distribution lines, actually were undertaken to finance the extravagant lifestyles and bizarre spending habits of the Le Nature's Executives. For example, upon information and belief, although Podlucky earned a salary of only \$50,000, he was building a mansion worth in excess of \$20 million. Podlucky also purchased millions of dollars worth of jewelry, art, and toy trains with the Company's money. The items that Podlucky purchased with money that he diverted from the Company – including the funds raised by sale of the Notes – included watches from Piaget, Harry Winston, Van Cleef & Arpels, and Rolex, necklaces and earrings containing diamonds, sapphires and other gems, and mounted and unmounted gems. According to a complaint filed by the federal government, Podlucky transferred money from the Company's accounts to his personal accounts over a six-year period.

115. Following the commencement of the Le Nature's bankruptcy proceedings, Le Nature's' website stated: "Le-Nature's has filed [for] bankruptcy and is no longer producing or selling its products. Unfortunately, the company is also unable to honor any promotions advertised online or elsewhere. We apologize for any inconvenience." The website is no longer operational.

**The Beginning of Wachovia's Symbiotic Relationship
with Le Nature's: Transactions in 2003**

116. Even before the Note Offering, Le Nature's commenced what would become a multi-year relationship with Wachovia, during which time Wachovia would serve as the exclusive financial advisor to, and investment banker for, Le Nature's. In this role, Wachovia was responsible for arranging, funding, syndicating, and selling an array of credit facilities, all to raise more money to fund Le Nature's' purportedly expanding production and sales. During the course of this relationship, Wachovia was also retained to explore a possible sale of the Company, a process through which it obtained even greater access to, and knowledge of, the Company's operations and finances (as well as bidders' reactions to the information they were provided). As the result of its multiple roles, Wachovia was provided with access to Le Nature's' financial records, personnel, and outside accounting and legal firms.

1 **The First Step: April 2003 Credit Facility**

2 117. After hiring Grant Rice, the former Bank of America investment banker with ties to
3 Le Nature's, Wachovia moved quickly to seize Le Nature's as a client. In April 2003, Wachovia
4 was the co-lead arranger for a \$150 million credit facility for Le Nature's (the "April 2003 Credit
5 Facility"). Wachovia Bank acted as the administrative agent. As set forth below, the April 2003
6 Credit Facility was repaid only two months later with funds raised, again by Wachovia, in the
7 Note Offering. With the April 2003 Credit Facility, Wachovia got its foot in the door, enabling it
8 to take steps to further enhance its limited presence in the high yield market.

9 **Wachovia Breaks Further into the High Yield Market with the June 2003 Note Offering**

10 118. In June 2003, Wachovia arranged the issuance and placement, and acted as the
11 initial purchaser, of the \$150 million Note Offering. The proceeds of the Note Offering were used
12 to satisfy Le Nature's' obligations under the April 2003 Credit Facility.

13 119. Wachovia marketed the Note Offering to investors through (i) a detailed Offering
14 Memorandum drafted by Wachovia and bearing the "Wachovia Securities" name on its cover, (ii)
15 in-person "road show" presentations along with Le Nature's management, and (iii) telephone
16 conferences, direct phone calls, and e-mails to investors.

17 120. The relationship between Wachovia and Le Nature's was unusual in that Wachovia
18 screened all information distributed by the Company to the Noteholders. Income statements,
19 balance sheets, cash flow statements, and other reports containing financial information, were all
20 distributed first to Wachovia, and then to Noteholders by Wachovia. In a typical deal, all
21 investors, including the underwriter, would see this type of information at the same time. Some of
22 the Noteholders complained that they were getting the information a day late from Wachovia, but
23 Wachovia insisted on controlling the information flow. All correspondence between Le Nature's
24 and the Noteholders ran through Wachovia.

25 121. By the time of the Note Offering, Wachovia knew that Le Nature's was a troubled
26 company. Motivated by (i) fees to be generated by the Note Offering, (ii) the solidification of an
27 on-going investment banking relationship with Le Nature's, and (iii) relief of the credit exposure
28 that its affiliate, Wachovia Bank, had incurred under the April 2003 Credit Facility, however,

1 Wachovia pressed forward with the Note Offering. The result was placement of the Notes with an
2 array of investors who would fall victim to Le Nature's' fraud, including Plaintiffs herein.

3 122. One of Wachovia's principal motivations for participating in Le Nature's' fraud,
4 and facilitating placement of the Notes, was its strong desire to build up its fledgling high-yield
5 bond business, which was dependent on generating financing transactions for mid-market
6 companies such as Le Nature's. In early 2003, Wachovia was still a comparatively new player in
7 the high-yield underwriting business. In 2000, Wachovia underwrote only one issue. In 2001 and
8 2002, it underwrote only four and 10 issues (respectively), increasing the total issue amount from
9 \$200 million in 2000 to \$476.6 million in 2001 and \$960.3 million in 2002. In 2003, the year of
10 the Le Nature's Note Offering, Wachovia underwrote considerably more: 38 issues valued at \$2.7
11 billion, earning fees of \$58 million (up from \$23 million in 2002, \$9.9 million in 2001, and \$4
12 million in 2000). Compared to other investment banks, however, Wachovia remained a minor
13 player in the sector. In 2003 alone, for example, Credit Suisse First Boston ("CSFB") underwrote
14 127 issues, valued at more than \$21.6 billion.

15 123. Struggling to compete with more established investment banks, Wachovia was not
16 as selective in choosing which high-yield issuances to pursue. Large and more established bond
17 issuers were unlikely to choose a fledgling underwriter like Wachovia. As a result, Wachovia
18 sought to expand its high-yield underwriting business through *quantity*, rather than quality, and
19 was willing to underwrite deals that other banks were not even willing to consider. The Le
20 Nature's Note Offering was just such a deal. In May 2003, Wachovia's High-Yield Capital
21 Markets Division (the "Origination Division"), which acted as an investment bank charged with
22 originating and underwriting investment opportunities, approached its publicly trading
23 counterpart, the High-Yield Sales (Trading and Research) Division (the "Sales Division"), with
24 the Le Nature's transaction. On information and belief, within Wachovia, the Sales Division
25 expressed misgivings about the Note Offering, specifically questioning the accuracy of Le
26 Nature's' recent sales trajectory. Moreover, a senior Wachovia executive had warned at the time
27 that the Company "had hair on it" – a colloquial term indicating challenges at Le Nature's.
28 Indeed, Le Nature's had serious financial and management integrity issues. As one former

1 member of the Sales Division acknowledged, the Sales Division was very concerned about
2 moving forward with the transaction and hoped that it would simply "go away."

3 124. In light of its concerns, the Sales Division tried to push off the transaction by
4 advising the Origination Division that, based on its review of the Note Offering, it believed
5 additional due diligence was needed. The Origination Division, hungry to complete the
6 transaction and further cement Wachovia's relationship with Le Nature's, advised the Sales
7 Division simply to trust the Origination Division's due diligence and move forward in selling the
8 Notes.

9 125. As a result, on information and belief, Wachovia pushed forward with the Note
10 Offering even though it was well aware that additional due diligence, requested by its own Sales
11 Division, had not been done. And lack of due diligence was only part of the picture. Even in
12 early 2003, Wachovia had direct information about the troubled state of affairs at Le Nature's.
13 Grant Rice, who had joined Wachovia from Bank of America, was a senior manager and
14 Wachovia's principal contact with Le Nature's. Like Wachovia, Bank of America considered the
15 possibility of raising financing for Le Nature's. On information and belief, that bank, unlike
16 Wachovia, cut off its efforts based on its distrust of the Company and the Company's lack of
17 openness in the due diligence process. Bank of America recognized that Le Nature's'
18 management could not be trusted, and thus that a financing transaction should not be completed.
19 Rice arrived at Wachovia armed with the knowledge that Le Nature's' managers lacked integrity.
20 But he brought Le Nature's with him as a client, and worked with fellow Wachovia employees to
21 complete the Note Offering, knowing all along that his former employer was unwilling to
22 complete a transaction with Le Nature's because of the financial integrity issues it had identified.

23 126. After the Note Offering closed, Podlucky inexplicably agreed to increase
24 Wachovia's fee for underwriting the Note Offering to 4%, notwithstanding the fact that Wachovia
25 had agreed to underwrite the Offering for 2.75%. In dollar terms, the unexplained increase in
26 Wachovia's fee amounted to a \$1.8 million reward for Wachovia.

27
28

1 The Offering Memorandum

2 127. The Offering Memorandum that Wachovia drafted and distributed to potential
3 investors in the Note Offering was riddled with material misstatements, exaggerating, among other
4 things, Le Nature's' sales amounts and profit levels. Driven by the Origination Division's desire
5 to press forward without any meaningful due diligence, and casting aside the warnings that
6 Wachovia already had received regarding the lack of reliability of Le Nature's' reported finances
7 and management's lack of integrity, Wachovia published these false statements to induce investors
8 to purchase the Notes.

9 128. Among multiple other misstatements, the Offering Memorandum included the
10 following materially false and misleading statements:

- 11 • From 1998 to 2003, net sales grew at a compounded annual growth rate of 63.1%. For the
12 twelve months ended March 31, 2003, the Company generated net sales and EBITDA of
\$145.0 million and \$55.2 million, respectively, resulting in an EBITDA margin of 38.1%.
- 13 • Net sales grew from \$19.2 million in 1998 to \$135.7 million in 2002.
- 14 • Le Nature's' gross sales for 2000, 2001 and 2002 were, respectively, \$40.658 million,
15 \$85.094 million and \$143.767 million.
- 16 • Gross sales increased 41.2% from the first three months of 2002 to the first three months of
17 2003. The increase was attributed to (i) a 96.3% increase in case sales of bottled products
(an increase of 2.2 million cases sold to 4.5 million cases sold in the first quarter 2003) and
18 (ii) a 14.0% increase in sales of tea concentrate and blended tealeaves to industrial
customers.
- 19 • Gross sales for the year ended December 31, 2002 increased by \$58.7 million, or 69.0%, to
20 \$143.8 million, as compared to \$85.1 million for the year ended December 31, 2001. The
increase in gross sales was attributed to (i) a 46.7% increase in sales of tea concentrate and
21 blended tealeaves to industrial customers and (ii) a 90.3% increase in case sales of our
bottled products (an increase of 8.4 million cases sold to 17.8 million cases sold in 2002).
- 22 • Gross sales for the year ended December 31, 2001 increased by \$44.4 million, or
approximately 109.3%, to \$85.1 million, as compared to \$40.7 million for the year ended
23 December 31, 2000.
- 24 • Le Nature's had \$6.307 million and \$5.136 million deposited with its tealeaf supplier at the
end of 2001 and 2002, respectively.
- 25 • For the twelve-month period ended March 31, 2003, gross sales of bulk tea concentrate
26 were \$31.5 million, representing 20.5% of total gross sales. During the same period, gross
sales of packaged bulk tealeaves were \$23.7 million, representing 15.4% of total gross
27 sales.

1 129. Given Le Nature's' actual sales and bulk tea transactions for the years 2000-02, as
 2 determined by the chapter 11 trustee, all of the information set forth above was materially
 3 incorrect and misleading when it was distributed to investors.

4 **The Contemporaneous June 2003 Credit Facility**

5 130. Coupled with the Note Offering, Wachovia arranged a replacement \$100 million
 6 credit facility in June 2003. Wachovia was the sole lead arranger and bookrunner. And, once
 7 again, its affiliate, Wachovia Bank, served as administrative agent for a fee. Wachovia syndicated
 8 the \$100 million credit facility – which consisted of a \$100 million revolving line of credit senior
 9 to the bonds – to multiple lenders.

10 131. As demonstrated by the several transactions that Wachovia arranged in early 2003,
 11 from the very outset of its relationship with Le Nature's, Wachovia turned a blind eye to Le
 12 Nature's' substantial infirmities in order to obtain massive fees, generate substantial public
 13 exposure, and develop its high-yield banking business. Indeed, in a widely circulated e-mail of
 14 July 1, 2003, Wachovia's bankers congratulated themselves on their close relationship with Le
 15 Nature's' management, and celebrated the fees and publicity generated by that relationship. The
 16 e-mail also highlighted Wachovia's ability to purposefully ignore "internal issues," such as the
 17 integrity and due diligence issues raised by its Sales Division, in order to achieve such results. As
 18 the e-mail makes clear, Wachovia was willing to sacrifice its own integrity, and adapt to Le
 19 Nature's' "ever-changing" deal, in order to promote its own business and financial success:

20 The recent transaction is receiving a lot of publicity here in
 21 Charlotte and everyone is aware that the recent bank/bond deal
 22 would not have happened without our prior support of the company
 23 via the previous bank deal and the rapport developed with
 24 management in the process. . . . As a result of your ability to adapt
 25 to an *ever-changing deal* and willingness to work in concert with
 CIB [a division within Wachovia], we have recognized *total fees of*
 26 *nearly \$7.5MM* between the two bank deals and the high yield
 27 issuance. *This deal has become a poster child for what we can get*
 28 *done when we don't get hung up on internal issues* and do what is
 best for the client and our firm as a whole.

1 **E&Y's Woeful Audits Mislead the Noteholders**

2 **1) *E&Y's Audits Were Prepared Specifically for the Note Offering***

3 132. In 2002, Le Nature's retained E&Y to act as its independent auditor. E&Y audited
 4 Le Nature's' 2002 financial statements and re-audited the Company's 2000 and 2001 statements,
 5 as the Company specifically requested that it do in advance of the Note Offering. E&Y purported
 6 to conduct the audits in accordance with auditing standards generally accepted in the United States
 7 ("GAAS"). Le Nature's also engaged E&Y to perform tax advisory services for the Company. Le
 8 Nature's purposefully sought out E&Y, one of the country's biggest and most well-known
 9 auditing firms, so that potential investors in the Company would take comfort in the apparent
 10 credibility of the Company's financial statements.

11 133. E&Y understood that the very purpose of its audit work was to provide audited
 12 financials in connection with the Note Offering. Indeed, while E&Y was retained to perform its
 13 audit of the 2002 financials on August 19, 2002, it was retained to reaudit the Company's 2000
 14 and 2001 financial statements on February 3, 2003, shortly before the Offering Memorandum was
 15 completed and distributed. E&Y's audit report, together with the accompanying financial
 16 statements for 2000, 2001, and 2002, were appended directly to the Offering Memorandum for the
 17 Note Offering. Additionally, financial information drawn from and specifically referencing the
 18 audited financial statements was peppered throughout the Offering Memorandum that was
 19 provided to potential purchasers.

20 134. E&Y knew that potential purchasers of the Notes would rely on the financial
 21 statements and E&Y's audit report in evaluating the Company and determining whether to
 22 purchase the Notes.

23 **2) *The Requirements of GAAS***

24 135. To conduct an audit in compliance with GAAS, an auditor is not permitted to
 25 simply accept financial information provided to it by its client. Rather, as set forth in the
 26 codification of auditing standards by the American Institute of Certified Public Accountants
 27 ("AICPA"), an "auditor has a responsibility to plan and perform the audit to obtain reasonable
 28 assurance about whether the financial statements are free of material misstatement, whether

1 caused by error or fraud.” (AU § 110.02) (Citations to “AU” refer to the codification assembled
 2 by the AICPA.) “The independent auditor’s objective is to obtain sufficient competent evidential
 3 matter to provide him or her with a reasonable basis for forming an opinion.” (AU § 230.11)

4 136. In addition, due professional care requires the auditor to exercise professional
 5 skepticism, defined as “an attitude that includes a questioning mind and a critical assessment of
 6 audit evidence. . . . Gathering and objectively evaluating audit evidence requires the auditor to
 7 consider the competency and sufficiency of the evidence. . . . [T]he auditor should not be satisfied
 8 with less than persuasive evidence because of a belief that management is honest.” (AU § 230.07-
 9 .09)

10 137. Auditors are also required to assess the risk of material misstatement of the
 11 financial statements due to fraud. (AU § 316) An example of the exercise of professional
 12 skepticism in response to the assessed risk of fraud is the “increased recognition of the need to
 13 corroborate management explanations or representations concerning material matters – such as
 14 further analytical procedures, examination of documentation, or discussion with others within or
 15 outside the entity.” (AU § 316.27) Based upon the auditor’s assessment of the risk of fraud:

16 The *nature* of auditing procedures performed may need to be
 17 changed to obtain evidence that is more reliable or to obtain
 18 additional corroborative information. For example, more evidential
 19 matter may be needed from independent sources outside the entity.
 20 Also, physical observation or inspection of certain assets may
 become more important. . . . The *extent* of the procedures applied
 should reflect the assessment of the risk of material misstatement
 due to fraud. For example, increased sample sizes or more extensive
 analytical procedures may be appropriate. (AU § 316.28)

21 138. The requirements for assessing the risk of fraud are especially important for a
 22 company such as Le Nature’s, where the CEO exercised exclusive control over many aspects of
 23 the Company’s finances. Auditors are required to take various fraud risk factors into
 24 consideration in planning the audit. Among the factors indicating the possible existence of fraud
 25 are the “domination of management by a single person or small group without compensating
 26 controls,” and “[u]nusually rapid growth or profitability.” (AU § 316.17) Management of a small
 27
 28

1 entity with unusually rapid growth or profitability may be motivated to avoid an interruption in its
2 growth trends, especially compared with others in its industry. (AU § 316.15)

3 139. Auditors are also required to be familiar with the business of the company they are
4 auditing and the industry within which the company operates. "The auditor should obtain a level
5 of knowledge of the entity's business that will enable him to plan and perform his audit in
6 accordance with generally accepted auditing standards." (AU § 311.06) Among other things, an
7 auditor should have sufficient knowledge to understand "the events, transactions, and practices
8 that . . . may have a significant effect on the financial statements." (*Id.*) Such knowledge of the
9 business assists an auditor in, among other things, valuing a company's inventories. (*Id.*)

10 140. An auditor's knowledge should extend beyond the company being audited to
11 include "matters affecting the industry in which the company operates." (AU § 311.07) Industry
12 knowledge includes an understanding of "economic conditions" within the industry. (*Id.*) An
13 auditor should be familiar with standard market prices for major inputs used by the company in
14 producing its goods.

15 3) ***E&Y Knew that Le Nature's Required "Close Monitoring," Yet It Chose Not***
16 ***to Implement Adequate Testing Procedures***

17 141. E&Y knew that, to complete a GAAS-compliant audit of Le Nature's, it would
18 have to undertake enhanced audit procedures. E&Y knew that Le Nature's presented atypical
19 risks mandating the use of such procedures. Rather than taking more steps to ensure the accuracy
20 of its audit, however, E&Y chose to limit its audit procedures such that its audit would fail to
21 comply with GAAS under any circumstances.

22 142. E&Y had several bases for requiring enhanced audit procedures. Most
23 significantly, E&Y knew that Podlucky had control over all phases of the Company's operations
24 and was involved in all areas of the accounting process with no effective segregation of duties.
25 E&Y knew that Podlucky made all key financial decisions for the Company, and was integrally
26 involved in day-to-day financial operations. It is highly unusual for the CEO to be so directly
27 involved in routine accounting functions, or to exercise such control over access to financial
28 information.

1 143. E&Y's audit revealed the extent of Podlucky's unusual involvement and the
2 Company's failure to segregate financial decision-making and review functions. Podlucky
3 performed a wide array of financial functions at the company, even controlling access to key data
4 files.

5 144. E&Y's review of the Company's segregation of duties must have indicated a
6 pervasive lack of adequate segregation. E&Y was aware, accordingly, that Podlucky could single-
7 handedly influence or manipulate the Company's financial results or the constituent elements
8 thereof.

9 **a) E&Y Did Not Perform an Adequate Test of Controls**

10 145. E&Y planned to test and rely upon controls for at least part of its audit assurance.
11 Given the weaknesses in internal controls that existed at Le Nature's, it was not appropriate for
12 E&Y to have relied upon internal controls as a means of reducing reliance on substantive audit
13 procedures. Moreover, E&Y's tests of controls were wholly insufficient. On information and
14 belief, E&Y did not test controls for tea sales, even though tea sales made up a significant portion
15 of Le Nature's' total revenues *and* differed substantially from sales of beverages. The tea sales
16 were not routine, were not subject to the same control processes, and were arranged and
17 documented by Podlucky alone. Failure to test controls for this significant portion of Le Nature's'
18 business fundamentally undermined the effectiveness of any revenues controls testing.

19 146. On information and belief, E&Y's testing was equally flawed on the expenditures
20 side. E&Y's failure to properly test controls directly contravened its plan to test controls, rely
21 upon them, and plan the nature, extent, and timing of its substantive audit procedures based on
22 those controls.

23 **b) E&Y Was Required to Perform Substantive Tests of Revenues and**
24 **Expenditures, Yet Did Not Do So**

25 147. Having failed even to test the adequacy of Le Nature's' controls, E&Y was in no
26 position to rely upon those controls in place of substantive testing. But E&Y did something far
27 worse. On information and belief, more than just adjusting the level of substantive testing, E&Y
28 abandoned substantive tests altogether. Whether or not E&Y's tests of controls were adequate –

1 which, under the circumstances, they were not – a failure to perform any substantive tests of Le
2 Nature's' revenues and expenditures would be a straightforward violation of GAAS.

3 148. As an initial matter, given the absence of effective controls over revenues and
4 expenditures, E&Y should have assessed control risk at the maximum level, placed no reliance on
5 controls, and obtained all of its audit assurance from the performance of substantive procedures.
6 Because of the high control risk of material misstatement, E&Y should have modified its
7 procedures to obtain *more* persuasive evidence. On information and belief, however, E&Y did
8 exactly the opposite – it failed to perform testing that would be required even if controls were
9 determined to be reliable. *Without having performed substantive audit procedures for revenues,*
10 *given the significance of revenues to Le Nature's' financial statements, E&Y lacked sufficient*
11 *basis for its audit report.*

12 149. Given the significant risks associated with the Le Nature's audit engagement and
13 the concentration of revenues with a few large customers, the most appropriate audit procedure
14 would have been the confirmation of recorded sales amounts directly with the largest customers.
15 This would have provided independent evidence from outside the Company. On information and
16 belief, however, E&Y did not either seek or obtain outside confirmations of sales from any of Le
17 Nature's' customers.

18 **4) E&Y Approved Inventory Amounts Based on Grossly Misstated Tea Prices**

19 150. At year-end 2002, Le Nature's reported -- and E&Y ratified in the audited financial
20 statements appended to the Offering Memorandum -- raw material inventories of \$10.95 million.
21 Of that amount, more than \$9 million was attributable to tealeaf inventories. Le Nature's
22 calculated the value of the tealeaf inventory by applying a purported purchase price of \$19.22 per
23 pound. In fact, however, Le Nature's paid between \$0.60 and \$0.65 per pound. *The vast bulk of*
24 *the inventory, accordingly, was overstated by more than 2800%.*

25 151. As Le Nature's' independent auditor, E&Y was required by GAAS to be familiar
26 with the business and the industry within which the Company operated. E&Y's facile
27 documentation of the grossly inflated \$19.22 per pound purchase and inventory price, and the
28

1 resulting inflated inventory levels, however, demonstrates that E&Y either had *no familiarity* with
2 the industry or was willing to overlook an obviously incorrect and inflated price.

3 152. Le Nature's actually paid less than one dollar per pound for the bulk tealeaf that it
4 purchased. The price that Le Nature's paid was consistent with the wholesale market price for
5 bulk tealeaf purchases at that time. If E&Y were familiar with the industry, it would have known
6 that \$1.00 per pound (or less) – not more than \$19 per pound – was a reasonable and customary
7 price for bulk tealeaf. Moreover, the price that E&Y used is actually higher than the *retail* price
8 for tea. Individually-packaged, consumer-oriented Chinese black tea is widely available for less
9 than \$6.00 per pound (in packages as small as two pounds). Bulk tea, purchased in quantities
10 exceeding 250,000 pounds, can be purchased for a small fraction of that price.

11 153. E&Y knew of the vast overstatement and failed to disclose it, or alternatively was
12 either grossly negligent or reckless in failing to uncover the massive price inflation.

13 154. In addition to massively overstating tealeaf inventory, Le Nature's' audited
14 financials included, as a current asset, a deposit of more than \$5 million for additional tealeaf to be
15 delivered. Like the value of the existing inventory, the amount of the deposit – if it was ever made
16 at all – was grossly overstated. *At a minimum*, the deposit amount – which itself accounted for
17 more than 16% of *all* of Le Nature's' reported current assets – was overstated to the same
18 egregious degree as the inventory valuation; i.e., by at least 2800%.

19 155. As Le Nature's' former chief financial officer explained, Le Nature's had received
20 invoices for bulk tea sales (such as the invoice for this deposit) from Ritz Foods, a tealeaf supplier,
21 that appeared to be manually typed on an invoice form from American Brewing, a bulk tea
22 customer. E&Y never attempted to determine why such large and important transactions were
23 reflected on non-standard documents purportedly issued by one of Le Nature's' major customers.

24 156. E&Y's use of flawed evidential matter to support the tea inventories and a deposit
25 at prices more than 25 times the amount paid by Le Nature's resulted in massively overstated
26 inventories and materially misstated financial statements. E&Y's failure to undertake any
27 meaningful corroboration of the concededly significant purchases and deposit was in violation of
28 GAAS.

1 5) ***E&Y's Audit of the Company's Assets and Liabilities Was Materially Flawed***

2 a) **Accounts Receivable**

3 157. On information and belief, E&Y did not receive responses to its inquiries to Le
4 Nature's' customers, and thus was unable to confirm outstanding receivable balances. Given the
5 significance of Le Nature's' largest customers to the Company, had the receivable balances been
6 legitimate, Le Nature's' management should have been in a position to persuade at least some of
7 these customers to return the confirmations. At a minimum, E&Y should have pursued additional
8 efforts to obtain responses to its confirmation requests. In the absence of responses, the required
9 professional skepticism should, at a minimum, have caused E&Y to question the legitimacy of the
10 balances.

11 158. Moreover, E&Y should have undertaken additional procedures because total
12 amounts reflected on customer invoices were nearly all identical for certain customers. On
13 information and belief, the recurring amounts on the invoices was the direct result of fraud. On
14 information and belief, Podlucky created multiple invoices corresponding to single shipments,
15 thereby generating false receivables. When those invoices were paid – typically with funds from
16 an outside account set up by Podlucky to perpetuate the fraud – the fake and repetitive invoices
17 resulted in false and substantially inflated revenues. Had E&Y properly audited the receivables,
18 and thus exposed their fraudulent and redundant nature, the massive overstatement of revenues
19 would have been revealed.

20 b) **Accounts Payable**

21 159. On information and belief, E&Y encountered an unusually high rate of error in
22 testing the Company's disbursements. E&Y should have extended its testing to address this risk
23 indicated by this high rate of error. Once again, however, E&Y failed to exercise the mandated
24 professional skepticism by extending the scope of its testing. E&Y simply relied on its initial
25 findings, including its reliance on the Company's internal controls, rather than conducting a
26 sufficient examination of the accounts payable.

1 6) ***E&Y Knew that Le Nature's Could Not Keep Current with Its Obligations***

2 a) **Undisclosed Failures to Satisfy Lease and Debt Obligations**

3 160. On information and belief, E&Y's audit revealed that Le Nature's was delinquent
4 in the payment of lease obligations. Failure to make timely payments raised an obvious question
5 with respect to LeNature's' liquidity and ability to meet its obligations and continue as a going
6 concern. On information and belief, however, E&Y did not adjust or expand its audit procedures.

7 161. Le Nature's' defaults on its lease obligations was especially problematic given the
8 high rate of growth in sales and profits that Le Nature's had reported (reported net income had
9 grown from \$1.3 million in 2001 to \$9.5 million in 2002). Le Nature's' inability to maintain its
10 financial covenants after having achieved this dramatic growth in claimed profitability meant that
11 meeting these covenants would be difficult in the future, especially in light of the planned increase
12 in financing (the purpose for which E&Y was undertaking the audits).

13 b) **Le Nature's Was Not Paying All of Its Federal and State Taxes**

14 162. In addition to serving as Le Nature's' outside auditor, E&Y was retained to provide
15 tax advice to Le Nature's. As the result of its role as tax advisor, E&Y was aware that Le Nature's
16 was not paying all of its taxes, that the Company was incapable of paying its taxes, and that the
17 Company was incurring substantial penalties because of its inability to pay the taxes that were
18 due.

19 163. On March 14, 2003 – well before E&Y issued its audit report for 2002 – an E&Y
20 tax partner sent a letter to Le Nature's' chief financial officer explaining the Company's tax
21 situation. The letter indicated that planned tax payments for Le Nature's included federal
22 penalties and interest of \$250,000 and state penalties and interest of \$60,000 based on Le
23 Nature's' inability to timely pay its taxes. The letter further explained: "Per your request, we
24 have included preprinted blank extensions for your completion. *It is our understanding that*
25 *based on your current cash position, you will be unable to make these payments in full.*"

26 164. Accordingly, when it issued its audit report, E&Y knew that Le Nature's lacked
27 sufficient cash to meet its current obligations, *including the Company's federal and state tax*
28 *liabilities.* Like the Company's inability to satisfy lease and debt obligations, this cash flow

1 problem was especially alarming in light of the Company's reported financial results, which
2 reflected substantially increased profits and sales. Indeed, in light of the reported results, Le
3 Nature's' inability to satisfy its obligations – without incurring additional debt and thereby
4 exacerbating its problems – called into question the Company's ability to continue as a going
5 concern, and should have caused E&Y further to question the legitimacy of the reported financial
6 results.

7 **7) E&Y Confirmed Grossly Incorrect Financials**

8 165. E&Y's multiple failures to comply with GAAS – including its apparent inability to
9 exercise the professional skepticism required of auditors – led to E&Y's issuance of an unqualified
10 audit report for financial statements that were dramatically misstated. E&Y's (i) failure to obtain
11 outside, independent, corroborative materials, (ii) acceptance of Podlucky's manufactured
12 evidence, notwithstanding its knowledge of his dominant control over the Company's finances,
13 (iii) acceptance of the adequacy of the Company's controls, without even testing them, (iv)
14 reliance on controls to limit – indeed, to omit altogether – substantive testing of revenues and
15 expenses, and (v) failure to implement appropriate audit procedures in response to clear
16 indications of financial problems at the Company, all contributed to E&Y's ultimate certification
17 of misleading and materially false financial statements.

18 166. After only a few days at Le Nature's, the court-appointed custodian was able to
19 determine that the Company's revenues were vastly overstated. The chapter 11 trustee has
20 determined, after a more detailed investigation, that Le Nature's' net sales in 2002 were no greater
21 than \$4.4 million. Accordingly, the trustee reported those revenues on the Company's amended
22 tax returns. E&Y, in stark contrast, issued its clean audit report with respect to financial
23 statements indicating 2002 net sales of \$135.7 million.

24 167. The overstatement of revenues enabled and approved by E&Y's inadequate audit
25 was, to say the least, dramatic. Reported net sales were more than 3000% of actual net sales, a
26 degree of misstatement that could not possibly result from negligence alone. For an auditor to
27 permit such vast overstatement of revenues, it must – as E&Y did here – ignore obvious red flags
28 of fraud, and issue a clean audit report notwithstanding an utter failure to test the subject

1 company's true controls or to perform substantive testing of the company's reported financial
2 results.

3 **The Events of July 2003: Le Nature's' Key Financial Managers**
4 **Identify Fraud at the Company**

5 168. On August 14, 2003, shortly after Wachovia completed Le Nature's' \$150 million
6 Notes Offering and new \$100 million credit facility, John Higbee, Le Nature's' chief financial
7 officer, abruptly resigned. Higbee was a veteran auditor – with more than 20 years of experience
8 as an audit partner at Arthur Andersen – who was hired by Le Nature's in 2002 to provide
9 legitimacy to Le Nature's' financial management team. Before joining Le Nature's, Higbee had
10 been a member of the Arthur Andersen team that audited Le Nature's' financial statements and
11 had done independent consulting work for Le Nature's. E&Y knew all of this.

12 169. In his detailed resignation letter, Higbee explained that he repeatedly had requested
13 direct access to the Company's general ledger detail. As set forth in the letter, however, Podlucky
14 refused to grant Higbee access to the general ledger, a remarkable position for any chief executive
15 to take with respect to a company's chief financial officer. Among other things, Higbee further
16 explained that Podlucky's completion of business transactions "without any normal review by
17 others, such as the CFO," had made it impossible for Higbee to fulfill his responsibilities to the
18 Company. Higbee concluded his letter by explaining the complete control – and the impropriety
19 of such complete control – that Podlucky exercised over Le Nature's:

20 I consider 1) *the absolute control you maintain over the*
21 *Company's detail financial records* 2) *the lack of checks and*
22 *balances related to deposits on equipment* 3) *the lack of checks and*
23 *balances related to deposits on tea leaf* 4) *the lack of checks and*
balances related to the sale of bulk tea concentrate and bulk tea leaf
to be material weaknesses in the Company's internal controls.

24 170. Higbee was not alone in his concerns and his willingness to express them. The
25 same day, Jennifer Fabry, the Company's chief administrative officer (who had recently been
26 given the title of chief financial officer in Higbee's place), and Stacy Juchno, the vice president of
27 administration, submitted their resignations. Both Fabry and Juchno wrote, *"I have seen*
28 *inconsistencies with how business is conducted and do not agree with such behavior."*

1 171. Higbee alerted the Company's auditors at E&Y to the resignations. In a letter to
 2 Podlucky dated August 22, 2003, E&Y requested that the Company "engage immediately
 3 competent independent legal counsel to conduct a thorough and complete investigation of the
 4 allegations made by the former employees." E&Y further explained that it would be "*unable to*
 5 *be associated with* any unaudited interim financial statements or *historical audited financial*
 6 *statements*, including issuing any consents or comfort letters, until the allegations are investigated
 7 thoroughly by independent counsel, we complete our review of the report of the investigation, we
 8 perform any additional procedures we consider necessary in the circumstances, and we interview
 9 the former employees." E&Y, however, failed to make any disclosure that its audit report and the
 10 accompanying financial statements should not be relied upon.

11 172. In response, Le Nature's purported to appoint a special committee of its board of
 12 directors (the "Special Committee") to investigate certain business transactions identified by
 13 Higbee, Fabry, and Juchno. The committee, in turn, retained the law firm Kirkpatrick & Lockhart
 14 LLP ("K&L") to conduct the investigation. Both the Special Committee and K&L, while
 15 purporting to conduct an independent investigation, limited the scope of the investigation to seven
 16 specific transactions identified by the resigning managers. With respect to these transactions, the
 17 resigning employees had expressed their concerns that:

- 18 • Podlucky exercised exclusive control over significant aspects of Le Nature's' business,
 19 including equipment deposits and purchases, the purchase of tealeaf, and the sale of Bulk
 Tea Products;
- 20 • Podlucky refused to explain his relationship with Lawrence Wooten, who they suspected
 21 controlled both (i) the sole supplier of tealeaf to Le Nature's, and (ii) Le Nature's'
 principal purchasers of Bulk Tea Products; and
- 22 • Podlucky's flamboyant lifestyle was not consistent with his purported annual income of
 23 \$50,000.

24 173. K&L's resulting report (the "Report") demonstrates that the law firm, while
 25 purporting to be an "independent" examiner of the resigning managers' allegations, was beholden
 26 to the corrupt management that had hired it and thus failed to conduct an adequate investigation.
 27 The Report repeatedly noted the unavailability of supporting information and documentation, the
 28 lack of Le Nature's' (and, specifically, Podlucky's) cooperation, and the insufficiency of Le

1 Nature's' almost nonexistent internal financial controls. Among other things, the Report revealed
 2 the following startling facts, all of which provide a glimpse into the perverse way in which Le
 3 Nature's was being managed:

- 4 • Andrew Murin (formerly president of Le Nature's) and Edward Reeves (the owner of the
 5 sole supplier of tealeaf to Le Nature's) were not "forthcoming" in their interviews. When
 6 K&L requested an opportunity to interview each of them again, "Le-Nature's refused to
 7 make either individual available."
- 8 • "In many instances, Counsel was unable to obtain external supporting documentation
 9 relating to the Bulk Tea Products transactions reviewed by it. This is *particularly*
 10 *problematic* in view of the substance of the interviews of Messrs. Murin and Reeves."
- 11 • Counsel sought to interview Lawrence Wooten, the owner of Le Nature's' principal Bulk
 12 Tea Products customer. In the first half of 2003, Wooten's companies supposedly
 13 purchased \$34.2 million of such products from Le Nature's and received trade credits of
 14 \$3.95 million that were approved by Podlucky *without any involvement of any other Le*
 15 *Nature's employee*. Wooten declined to be interviewed.
- 16 • Le Nature's did not enable Counsel to interview a representative of Vistar, a substantial Le
 17 Nature's customer that received a large refund for tea concentrate in the first half of 2003.
- 18 • Le Nature's inexplicably agreed to increase Wachovia's fee in connection with the June
 19 2003 Notes Offering even though the offering was "oversubscribed at the time of
 20 Wachovia Securities' proposal to revise the fee."
- 21 • Le Nature's was unable to provide reliable documentation "evidencing the shipping or
 22 receiving" of bartered items.
- 23 • "Counsel was unable to independently verify receipts and shipments related to Le-Nature's
 24 reported purchases of tealeaf and sales of Bulk Tea Products because the third party
 25 documents reflecting these transactions are illegible, unreliable, or non-existent."

174. Among the many other deficiencies in the Report, K&L utterly failed to obtain
 supporting documentation and information concerning bulk tea concentrate and bulk tealeaf sales.
 Documents were missing, key customers (with connections to Podlucky) refused to be
 interviewed, and receipts and shipments could not be verified. The insufficiency of the Report in
 this regard is jarring, given that problems in this specific area were identified by Higbee in his
 resignation letter. Indeed, even K&L recognized that "there are significant internal control
 weaknesses relating to the tealeaf inventory, including the lack of valid third party shipping
 documents and inadequate segregation of duties." But based on its determination that Podlucky's
 "explanation for Le-Nature's Bulk Tea Product activity" was "plausible," K&L concluded that Le
 Nature's' bulk tea sales and purchases were sufficiently identified.